98TH CONGRESS
1st Session

COMMITTEE PRINT

S. PRT.
98-26, PART 1

THE TIMELINESS AND COMPLETENESS OF THE FEDERAL BUREAU OF INVESTIGATION'S DISCLOSURES TO THE UNITED STATES SENATE IN THE CONFIRMATION OF LABOR SECRETARY RAYMOND J. DONOVAN

REPORT OF THE SPECIAL COUNSEL

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

MAY 1983

Printed for the use of the
Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
19-616 O WASHINGTON: 1983

S542-4

COMMITTEE ON LABOR AND HUMAN RESOURCES

ORRIN G. HATCH, Utah, *Chairman*

ROBERT T. STAFFORD, Vermont
DAN QUAYLE, Indiana
DON NICKLES, Oklahoma
GORDON J. HUMPHREY, New Hampshire
JEREMIAH DENTON, Alabama
LOWELL P. WEICKER, Jr., Connecticut
CHARLES E. GRASSLEY, Iowa
JOHN P. EAST, North Carolina
PAULA HAWKINS, Florida

EDWARD M. KENNEDY, Massachusetts
JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
THOMAS F. EAGLETON, Missouri
DONALD W. RIEGLE, Jr., Michigan
HOWARD M. METZENBAUM, Ohio
SPARK M. MATSUNAGA, Hawaii
CHRISTOPHER J. DODD, Connecticut

RONALD F. DOCKSAI, *Staff Director*
KATHRYN O'L. HIGGINS, *Minority Staff Director*

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C., April 22, 1983.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Committee's resolution of July 22, 1982, authorizing an investigation of the timeliness and completeness of the disclosures made to this Committee during the confirmation of Labor Secretary Raymond J. Donovan, I prepared the accompanying report of findings, conclusions, and recommendations, with appendix. I respectfully suggest that they be printed.

Sincerely,

JOHN P. FLANNERY II,
Special Counsel.

Enclosure.

CONTENTS

	Page
I. Preliminary remarks	1
II. Findings	3
A. The investigation of the Schiavone Construction Co. before the nomination of Raymond J. Donovan	3
1. The "Kantor Check" case	3
2. The Gross Extortion case	4
a. A note on FBI record-keeping and retrieval in the Gross case and others	5
3. The TUMCON (or "Masselli") investigation	6
a. Mr. Masselli's alleged "takeover" of one Schiavone Company subcontractor and the substitution by another with the agreement of the Schiavone Company	6
b. The Masselli tape reference to the Schiavone Company and its officers including Mr. Donovan	8
i. The original request	8
ii. A note on ELSUR, the FBI's principal filing system for references found on a wiretap (including the Masselli wiretap)	9
iii. Masselli refers to Mr. Donovan on January 24 and 27 1979	9
iv. Mr. Masselli refers to Mr. Donovan on March 15 ,1979	10
v. Mr. Masselli refers to Mr. Donovan on June 4, 1979	10
vi. On June 26, 1979, Mr. Masselli refers to a social function	11
vii. Mr. Masselli refers to Mr. Donovan on June 30, 1979	11
viii. The Masselli wiretap is terminated	12
c. The FBI notifies Messrs. Masselli, Galiber and others that they are under investigation	12
d. The N.Y. Times discloses to the public that Messrs. Masselli, Galiber and others are under investigation	12
B. The nomination of the Secretary of Labor	13
1. The FBI check for Mr. Donovan's name uncovers no record	14
2. After speaking to the transition team, FBI Director Webster conducts an additional search that uncovers the "HOFEX" references to the Schiavone Company	14
3. The President-elect announces his intention to nominate Mr. Donovan	16
4. The Kantor investigation surfaces in press accounts	16
5. Mr. Fielding requests a full-field investigation of Mr. Donovan	17

II. Findings—Continued
B. The nomination of the Secretary of Labor—Continued
6. The next day the Committee requests the FBI to report on the Kantor investigation and any other investigation of its handling of the Donovan company ---------- Page 17
7. The FBI advises the transition team that its investigation is "favorable and complete" without mentioning the Kantor investigation; the FBI discloses the Gross investigation to the transition team but provides few details---------- 18
8. The Committee adjourns Mr. Donovan's confirmation hearing because the FBI failed to deliver on time its report of the Kantor investigation---------- 18
9. Press accounts of the adjourned Donovan hearing likely prompted an informant to call the FBI in N.Y.; that call led to the discovery of the "Masselli" investigation and the taped reference to Mr. Donovan ---------- 19
10. The N.Y. investigation triggered by the informant's call also uncovered an allegation that Mr. Donovan had organized crime ties to Big J Trucking ("The Big J Allegations")---------- 20
11. On January 12, Mr. Donovan appears for his confirmation hearing; Chairman Hatch schedules a vote of the Committee for January 15---------- 21
12. Mr. Mullen also knew of the Masselli tape reference but he did not tell the Committee before January 15---------- 22
13. Mr. Fielding knew of the Masselli investigation and organized crime allegations but he did not tell the Committee before January 15---------- 22
14. As a result of press accounts about Mr. Donovan's confirmation hearing, an informant named Picardo comes forward and the Committee vote on the confirmation is delayed past January 15---------- 23
15. Chairman Hatch and the Ranking Minority Member met with the Director, the Committee staff interviewed Mr. Picardo, and an appearance before the Committee is scheduled for Mr. Donovan, as well as the FBI---------- 23
16. Through January 22, 1981, the FBI investigated the Picardo allegations but not much else---------- 24
17. The FBI Report, prepared Statement and testimony before the Committee---------- 25
C. After the nomination, the unraveling---------- 31
1. In May 1981, Messrs. Masselli and Gross are indicted.. 31
2. In June 1981, Times Magazine uncovers the Masselli tape reference; the Committee requests the reference and an explanation---------- 31
3. In July 1981, Mr. Mullen becomes the Acting Administrator for DEA---------- 32
4. In December 1981, the Attorney General asks for a Special Prosecutor to investigate "any allegations concerning the truthfulness of Secretary Donovan's testimony" ---------- 32
5. By December 1981, Mr. Mullen had been "acting" for about five months---------- 32
6. Senators Hatch and Kennedy request specific portions of the Masselli tapes; the Department "respectfully declines"---------- 33
7. In March and April, the FBI discloses six incidents that it had not previously disclosed to the Committee but not the HOFEX references to the Schiavone Company nor the Big J allegations against Mr. Donovan---------- 33

II. Findings—Continued
C. After the nomination, the unraveling—Continued
8. In May, the FBI Director disclosed the FBI's own investigation involving Mr. Donovan or his investigation ..... Page 33
9. In June, Mr. Mullen publicly admits that he "consciously" withheld the Masselli tape reference from the Committee; Senators Hatch and Kennedy put a hold on his nomination to become DEA Administrator 34
10. Director Webster charges that the transition team was "not interested" in pursuing the organized crime allegations 35
11. The Special Prosecutor issues his report disclosing that there are six tape references to Mr. Donovan, not just one as the FBI had said 36
D. The committee investigates the timeliness and completeness of the FBI's disclosures to the committee 36
1. The Director said that the HOFEX references that he reported to Mr. Mullen and to the transition team, but withheld from the Committee, never existed 37
2. Messrs. Adamski and Mullen give sworn testimony regarding the Masselli tape references to Mr. Donovan 38
a. Mr. Adamski testifies that checking the New Jersey wiretaps was a "procedural thing" done "in any applicant investigation" 38
b. Mr. Mullen testified that he did not mention the New Jersey wiretaps to avoid discussing the Masselli wiretaps 40
3. The Big J information is disclosed in the Special Prosecutor's Report for the first time, after Messrs. Mullen and Adamski have testified 42
4. The FBI's search of its indices in January 1981 uncovered another investigation of the Schiavone Company but the FBI did not disclose it 44
III. Conclusions 44
IV. Recommendations 46

THE TIMELINESS AND COMPLETENESS OF THE FEDERAL BUREAU OF INVESTIGATION'S DISCLOSURES TO THE UNITED STATES SENATE IN THE CONFIRMATION OF LABOR SECRETARY RAYMOND J. DONOVAN

I. PRELIMINARY REMARKS

In 1956, Raymond J. Donovan was a performance bond salesman in New Jersey; Ronald Schiavone started a subcontracting firm, Schiavone Construction Company, in New Jersey that same year.[1] Three years later, Mr. Donovan joined Schiavone's New Jersey firm, then doing business at about $200,000 a year. By 1980, the Schiavone Company business was $150 Million in a single year. Schiavone had $1 Billion in construction contracts in the intervening two decades.[2] Perhaps the largest contract they obtained was not in New Jersey, but a $500 Million federally funded contract in New York to build additions to the city's subway system.[3]

Mr. Donovan's primary responsibilities at the Schiavone Company included labor relations and labor negotiations.[4] Mr. Donovan was, he said, "deeply involved in the labor negotiating processes", dealing principally with building and construction trade unions and "serv[ing] on labor committees in the negotiation of agreements".[5] Labor leaders considered him "tough", he said, "but they [the labor leaders] also say I have integrity and I'm fair".[6] In December 1980, the President-elect announced his intention to nominate Mr. Donovan to be his Secretary of Labor.[7]

The President's nomination invoked the United States Senate's shared responsibility under the Constitution to inform itself about the nominee so that it could "advise" the President and "consent"—or withhold its consent—to the appointment.[8]

In January 1981, the United States Senate and its Committee on Labor and Human Resources ("the Committee") relied principally on the FBI to inform the consent it gave to the President's nomination. Anthony Adamski, Jr., of the Federal Bureau of Investigation ("FBI") ran the background investigation of Mr. Donovan.[9] When it was over, Francis M. Mullen, Jr., then Executive Director of the

---

[1] Hearings on the Nomination of Labor Secretary Raymond J. Donovan before the Committee on Labor and Human Resources, 97th Congress, 1st Session 4, 15, 18 [hereinafter cited as "D. Tr. —"]. Mr. Donovan gave sworn testimony to this Committee at hearings held by the Committee on January 12 and 27, 1981. Messrs. Mullen and Adamski also testified before this Committee on January 27, 1981.

[2] Messrs. Schiavone and Donovan actually acquired a number of business interests including Schiavone Equipment, Schiavone-Buckley, Schiavone Building, and Schiavone Steel, as well as subsidiaries including: Colonial Leasing, Livingston Dodge, Lamington River, Reynwood Corp., and Fiddler's Elbow Country Club. See D. Tr. 252–293. For other Schiavone companies, see note 36, *infra*, and the accompanying text.

[3] D. Tr. 15, 18.

[4] D. Tr. 7; D. Tr. 9 (Donovan's "Statement for Completion by Presidential Nominees" at p. 5).

[5] D. Tr. 138, 149, and 151.

[6] D. Tr. 138, 149.

[7] For a discussion of the FBI's background investigation prior to the President-elect's announced intention to nominate Mr. Donovan as his Labor Secretary and the announcement itself, see notes 124–40, *infra*, and accompanying text.

[8] Article II, Section 2 of the U.S. Constitution provides that the President shall nominate but only appoint "by and with the advice and consent of the Senate".

[9] For a discussion of Mr. Mullen's responsibilities and actions in the background investigation of Raymond J. Donovan, see notes 130–40, 178–240, *infra*, and accompanying text.

19-616 O - 83 - 2

FBI, told the Committee that the FBI investigation had been "thorough and complete" and had "surfaced *no* information which would reflect unfavorably upon Mr. Donovan *in any manner* (emphasis supplied)".[10]

After Mr. Donovan's confirmation, there were, however, press accounts of "other information" known to the FBI in January 1981 but not disclosed to the Committee.[11] The Committee then had correspondence with the Department of Justice ("the Department") that confirmed that the FBI had information including a wiretap reference to Donovan, characterized by the FBI as "pertinent" that it withheld from the Committee.[12] Newly discovered information triggered the appointment of a Special Prosecutor.[13] As he "finished" his investigation in June 1982, the Special Prosecutor received more information including information that the FBI had had since January 1981; he therefore issued a supplemental report.[14]

In July 1982 the Committee stated that it had "reason to believe" that the information it received in January 1981 was "incomplete" and not "timely" provided and passed a resolution authorizing an investigation to conclude whether or not it had received "full, complete and timely disclosure".[15] The Committee expressly said it was not concerned with the truth or falsity of the allegations against Mr. Donovan—that was the province of the Special Prosecutor. The Committee did however want to know why the FBI told it about some allegations but not at all about others. This report is therefore not about the truth or falsity of the allegations—indeed, at least one witness recanted the allegations he made and has since been indicted for making false statements. This report is only about what the FBI did (or failed to do) with the allogations it had and for that reason—and that reason only—this report necessarily repeats some allegations although it repeats no allegation that was recanted.

In August, the Committee received the sworn testimony of Messrs. Mullen and Adamski.[16] Their testimony accompanies this report.[17] The Committee scrutinized the relevant documents, marked many of them as Exhibits, asked Messrs. Mullen and Adamski about them and the Exhibits accompany this report.[18]

In the fall of 1982, after both Messrs. Adamski and Mullen had testified, the Committee discovered that the FBI had other information that it had not delivered to the Committee.[19] This tardily tendered information is necessarily addressed in this report.

---

[10] For a discussion of Mr. Mullen's responsibilities and actions in the background investigation of Raymond J. Donovan, see notes 130–40, 178–240, *infra*, and accompanying text.

[11] Perhaps the most significant one was a Time Magazine article, dated June 8, 1981. For a discussion of that article and the aftermath, see notes 243–44, *infra*, and acompanying text.

[12] For further discussion, see notes 170–77, 187–88, 245–46, *infra*, and accompanying text.

[13] For a discussion of the appointment of the Special Prosecutor, see notes 249–52, *infra*, and accompanying text.

[14] See notes 348–52, *infra*, and accompanying text.

[15] For further discussion of the resolution see note 291, *infra*, and accompanying text.

[16] The Committee Chairman administered the oath to and questioned Mr. Mullen on August 11, 12, 17, and 18, 1982; similarly, he administered the oath to and questioned Mr. Adamski on August 18, 19, and 20, 1982.

[17] The 885 page Appendix [hereinafter referred to as "App. —"] to this report contains the complete sworn testimony of Mr. Mullen (App. 1–500) and Mr. Adamski (App. 501–885).

[18] During the testimony of Messrs. Mullen and Adamski, 53 Exhibits were identified and discussed. An index of those Exhibits [hereinafter referred to as "Ex. —"] is found in the Appendix (App. v–vii).

[19] For a discussion of the information the FBI received on January 10, 1981 and how the Committee staff discovered it more than two years later, see notes 348–60, *infra*, and accompanying text.

Finally, Mr. Mullen has been the "Acting" Administrator for the Drug Enforcement Administration ("DEA") since July 13, 1981, more than twenty months. Since he was a "key figure" in the Donovan background investigation, the Chairman and Ranking Minority Member requested that the Chairman of the Committee on the Judiciary hold his confirmation in abeyance pending this investigation; the Chairman of the Judiciary Committee has. This has been a spur to publish this report. Thus, this report of the findings and conclusions of the investigation to date.[20]

II. FINDINGS

A. The investigations of the Schiavone Construction Company before the nomination of Raymond J. Donovan

During the more than two decades of extraordinary success enjoyed by the Schiavone Company before Mr. Donovan's nomination, the Schiavone Company had been questioned, subpoenaed and an investigative "subject", that is, "within the scope of the grand jury's investigation.[21]

What follows are brief descriptions of the three investigations known to involve the Schiavone Company prior to Mr. Donovan's nomination:

(1) A $13,000 payment by the Schiavone Company in 1967 to a bogus company called Kantor Supply, a conduit for payoffs to organized crime figures and corrupt public officials,[22]

(2) the alleged extortion of the Schiavone Company by Labor representative Harry Gross in 1977,[23] and

(3) the "Masselli" investigation, begun in 1978—and still ongoing—of the alleged forceful takeover of one Schiavone subcontractor by Mr. Masselli, an organized crime figure, and the establishment of an allegedly bogus minority business enterprise ("MBE") by Mr. Masselli, as Schiavone's "new" subcontractor.[24]

1. The "Kantor Check" case

The first grand jury investigation involved Kantor Supply Company, set up in the mid-1960s by Irving Kantor for contractors to make political payoffs to organized crime figures and corrupt public officials. Mr. Kantor testified that his company's name "was just a name" and, at the behest of organized crime figures, he issued phony blank invoices to contractors in exchange for their checks.[25] His sole

[20] The findings and conclusions are discussed respectively in notes 21–363 and 364–86, *infra*, and accompanying text.

[21] The Department of Justice's Manual expressly states that the "subject" of an investigation is "a person whose conduct is within the scope of the grand jury's investigation." United States Attorney Manual, Title 9—Criminal Division, § 9–11,250, (Advice of Rights), Chapter 11, p. 12 [hereinafter cited as "U.S. Attorney's Manual"].

[22] For a description of the Kantor check case, see notes 25–35, *infra*, and accompanying text.

[23] For a description of the Gross Extortion case, see notes 36–45, *infra*, and accompanying text.

[24] For a description of the TUMCON (or "Masselli") investigation, see notes 50–116, *infra*, and accompanying text.

[25] The organized crime figures included Anthony "Tony Boy" Bolardo, an alleged member of the Genovese crime family. D. Tr. 63, 67, 70, 78. Vito Genovese, after whom the "family" is named, was sentenced in April 1959 to a 15 year sentence for narcotics trafficking. He reportedly controlled most of organized crime in New Jersey leaving—while he was in jail—the day-to-day operations to Gerardo (Jerry) Catena in New Jersey and to Thomas (Tommy Ryan) Eboli in New York. Thus, the "Genovese family". *See* Organized Crime Hrgs. 777; *see also* Grutzner, "Jersey Mafia Guided from Prison by Genovese", N.Y. Times, December 25, 1968, 41.

job, he said, after issuing blank invoices, was "to deposit [the] checks [in the bank] and withdraw the money". He did not have to withdraw all of it; "Five percent", he said, "I was to keep [that] for myself".[26] Kantor thereby "washed" payoffs to Newark city officials including the Director of Public Works and Newark Mayor Hugh Addonizio.[27]

In 1967, Mr. Donovan authorized a $13,000 check to Kantor Supply Company. Asked about the Schiavone Company, Mr. Kantor, then "dying with an incurable disease" swore, "I gave [the Schiavone Company] the blank [Kantor] invoice—once only." He said it "was in the [Schiavone Company] office." [28] Schiavone personnel acknowledged that "a man" visited their office [29] and afterwards the Schiavone Company dumped at least 30,000 cubic yards of landfill on property that belonged to the city of Newark.[30]

The FBI opened a file on Kantor, the "subject" of investigation. The Internal Revenue Service ("IRS"), however, ran the investigation.[31] The Newark U.S. Attorney subpoenaed Schiavone's records covering an eight year period; IRS reviewed them. The U.S. Attorney questioned Mr. Donovan as well as other Schiavone Company officials about the $13,000 payment to Kantor.[32] Donovan told the U.S. Attorney that Schiavone paid to dump the landfill on land owned by Kantor—although that land was in fact owned by the City of Newark. The Schiavone Company had no written invoice, bill or lease to dump the fill; Mr. Donovan presumed, he said, that the land belonged to Kantor.[33] No Schiavone Company official was indicted as a result of that investigation. Both the former Newark Director of Public Works and Newark's Mayor Hugh Addonizio were, however, reportedly indicted for conspiring to extort payoffs totalling $500,000 from another contracting concern.[34] Both were convicted and later sentenced to ten years imprisonment.[35]

2. The Gross Extortion Case

The FBI ran a second grand jury investigation in the Eastern District of New York in the late 70s focusing on corrupt labor representative Harry Gross, who allegedly extorted no-show jobs and payoffs from construction companies including the Schiavone Company. The New York City Metropolitan Transportation Authority ("MTA") granted the Schiavone Company $500 Million in federally assisted contracts to construct new subway routes for the city's five boroughs.[36] The Schiavone Company had as many as 2,000 workers on the MTA projects; some workers were represented by Local 282 of

[26] D. Tr. 79.
[27] D. Tr. 63, 67, 70, 111, 118.
[28] D. Tr. 99, 84.
[29] D. Tr. 102, 105, 110.
[30] D. Tr. 63–65, 105–106, 111, 112 113, 115.
[31] Ex. 11, App. 100.
[32] D. Tr. 67, 69, 102.
[33] D. Tr. 102, 109, 113.
[34] Charles Grutzner, "U.S. Indicts Mayor of Newark, 9 Present or Former Officials on $253,000 Extortion Charges", N.Y. Times, December 18, 1968, at A1.
[35] Ronald Sullivan, "Addonizio Given a 10 Year Term", N.Y. Times, September 23, 1970, at A1.
[36] The Schiavone Company agreed to two federally assisted contracts as joint ventures: (1) the Schiavone-Fitzpatrick venture on the Vernon Boulevard subway project and (2) the Schiavone-Impresit, Giriola, Lodigiani Inc.—Thomas Crimmins Contracting Company ("S–I–C") venture on the 63rd Street subway project. D. Tr. 49. Impresit S.p.A. in the latter joint venture, was a subsidiary of the Fiat S.p.A. Holding Company in Milan, Italy. *See* Moody's Industrial Manual, "Fiat, Societa per Azioni", Vol I., A–I, p. 1360.

the International Brotherhood of Teamsters ("the Teamsters") [37] on the 63rd Street subway project, a tunnel.[38] Harry Gross, the Teamsters' Business Agent for that job, demanded in 1977 of Schiavone Vice-President DiCarolis that he agree to hire Mr. Gross' chauffer as a "ghost employee'—as the price of "labor peace".[39] Mr. DiCarolis told Mr. Donovan of Gross' demand.[40] The Schiavone Company later hired Gross' chauffeur and he was a "no-show" employee for six months until June of 1978.[41]

The FBI opened a file containing Mr. Gross' alleged extortion of Schiavone. An FBI investigation followed. Both Mr. Gross and the Schiavone Company were investigative "subjects", namely, their conduct was "within the scope of the grand jury's investigation." [42] In December 1978, after consulting with Schiavone Company's "house counsel", DiCarolis testified before the grand jury [43] as did three other Schiavone Company employees.[44] At the conclusion of the FBI's grand jury investigation, no Schiavone Company official was indicted; Gross was, however, later indicted for extorting not only the Schiavone Company but other companies as well. Mr. Gross has not yet been tried on this indictment.[45]

a. A note on FBI record-keeping and retrieval in the Gross case and others

In the case of Gross' alleged extortion—as was true in the Kantor case—the FBI opened a file. The FBI's filing system is called the "Central Records System" encompassing investigative, applicant and other files.[46] Whatever the FBI uncovers or receives in a case—no matter whether it is an investigative or an applicant investigation—is routed to a file that is coded.[47]

The files, all the files, including the one used in the investigation of Gross' alleged extortion, comprise mountainous haystacks of paper including reports, telexes, correspondence and the like. The FBI's "key" to finding information about any person, corporation or subject in this haystack is its "*general indices*, consisting of index cards [sic] on all manner of subject matters [sic] but *primarily a name index of*

[37] D. Tr. 49, 121.

[38] The 63rd Street project, at about $400 Million, was a large portion of the Schiavone Construction Company's MTA contract, requiring about 500 employees. D. Tr. 127.

[39] Memorandum approved by Mr. John Keeney, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice [hereinafter referred to as "Keeney Memorandum"], D. Tr. 121.

[40] D. Tr. 140.

[41] Keeney Memorandum, D. Tr. 121.

[42] Ex. 10, App. 98; See also notes 154–57, *infra*, and accompanying text.

[43] D. Tr. 134, 125, 129; Ex. 10, App. 98.

[44] Keeney Memorandum, D. Tr. 121; D. Tr. 145.

[45] On May 21, 1981, Mr. Gross was indicted on federal racketeering and extortion charges. Not only was he charged with obtaining a no-show job for his chauffeur from Schiavone but he was also charged with having two automobiles (worth $19,000) from two companies and $2,500 from another company. See Joseph Fried, "Union Aide is Indicted in Brooklyn", N.Y. Times, May 22, 1981, at 43.

[46] Appendix to Hearings on FBI Statutory Charter before the Subcommittee on Administrative Practice and Procedure of the Committee on Judiciary, U.S. Senate, 95th Congress, 2d Session 39 ("FBI Central Records System", report prepared by the FBI's Records Management Division, dated August 1978, at 4) [hereinafter referred to as "FBI Record Keeping"].

[47] The files are coded as follows, GGG–IIIII–SSS, corresponding to: (1) a general classification number (GGG–), (2) an individual case file (–IIIII–), and (3) the sequential order (–SSS) a report or other document is put in the file. The first three digits of the file involving the alleged Gross extortion was likely coded "183–" for "Racketeer Influenced and Corrupt Organization ("RICO")." *Id.* at 40–41; Ex. 10, App. 93. Reports regarding Schiavone, also the "subject" of investigation, would have been placed in the file with the last three digits corresponding to the sequence in which the documents were filed.

individuals (emphasis supplied)." The indices are "revised as each new piece of informaiton is added to the file." In the indices, "all pertinent names or subjects that have been the object of an investigation conducted by the FBI" are alphabetically cross-referenced, as are "individuals not the main subject of an investigation but physically involved." When the FBI runs a "name check" of some person or corporation, it searches these indices.[48]

3. The TUMCON (or "Masselli") Investigation

By the latter part of 1978, the FBI had a third investigation "of [the] Schiavone Construction Company" called TUMCON (for *Tum*inaro *Con*spiracy).[49] At the outset, TUMCON was reportedly concerned with narcotics traffiking[50] but soon after the investigation began, its focus shifted to other organized crime activity and the alleged use of political influence to obtain construction contracts.[51]

Central to the TUMCON inquiry was William Pellegrino Maselli, an "alleged self-admitted soldier in the Genovese [crime] family".[52] The FBI and later the grand jury scrutinized Mr. Masselli's allegedly forceful takeover of a Schiavone Company subcontractor and the legitimacy of the Minority Business Enterprise ("MBE") that he substituted as its "new" subcontractor with Schiavone Company approval. The FBI also taped the conversations Mr. Masselli had with various individuals including at least one known Schiavone Company official as well as his references to Mr. Donovan by name in six different conversations.

What follows is a discussion of: (a) the FBI's known TUMCON (or Masselli) investigation limited to Masselli's alleged "takeover" of one Schiavone Company subcontractor and substitution by another with the agreement of the Schiavone Company, (b) the Masselli tape references to the Schiavone Company and its officers including Mr. Donovan, (c) the FBI's notification of Masselli and others of the investigation before Mr. Donovan's nomination, and (d) the New York Times articles disclosing to the public the FBI investigation of Masselli before Mr. Donovan's nomination.

a. Mr. Masselli's alleged "takeover" of one Schiavone Company subcontractor and the substitution by another with the agreement of the Schiavone Company

There were a number of Executive and legislative initiatives to assure non-discrimination. In 1965, President Johnson signed an Executive Order to insure that government monies, spent on construction

---

[48] *Id.* at 202; see also notes 124–29, *supra* and accompanying text.
[49] App. 122; Ex. 19, App. 207.
[50] TUMCON referred to "Tuminaro", after Angelo (Little Angie) Tuminaro, who had a criminal record including grand larceny, assault, robbery and violation of New York and federal narcotics law. In the 1960s, Mr. Tuminaro received shipments of pure french heroin from Joseph Controni and his Montreal "associates" for sale in New York in the so-called French Connection case. See hearings on Organized Crime and Illicit Traffic in Narcotics before the Permanent Subcommittee on Investigation of the Committee on Government Operations, 88th Congress, 1st and 2d Sessions 788 (Appendix) [hereinafter cited as "Organized Crime Hrgs. —"]. Even in the 1970s Mr. Tuminaro was reportedly considered to be "Mr. Big" in heroin trafficking; although he was a fugitive, his "organization" nevertheless remained active. By the beginning of the TUMCON investigation in 1978, Mr. Tuminaro would have been in his late 70s. Newsday, "Zeroing in on the Heroin Dealers", February 21, 1978, 7–8).
[51] App. 303; Ex. 15, App. 136.
[52] Ex. 18, App. 113; Ex. 15, App. 136.

contracts fostered non-discrimination, rather than the contrary.[53] In 1977, Congress provided that "no grant shall be made . . . for any local public works project unless the applicant gives satisfactory assurance to the Secretary [of Commerce] that at least 10 per centum of the amount of each grant shall be expended for minority business enterprise ('MBE')." [54] An MBE, according to the statute, is a company, "50 per centum of which is owned by minority group members" and "minority" by definition includes blacks.[55] It is this latter provision involving MBEs that became a matter of concern in the TUMCON investigation. Mr. Donovan acknowledged that Schiavone Company's agreement with the MTA necessarily incorporated this statutory requirement that Schiavone "sub out 10%" of its projects to MBEs. Mr. Donovan also cited the difficulty this requirement presented to contractors; he testified, "MBE contractors are few and far between, unfortunately".[56]

In or around 1978, Schiavone Vice-President Al Magrini allegedly told Mr. Masselli to form an MBE if he wanted a contract with the Schiavone Company.[57] It was alleged that Mr. Masselli was a "soldier" in the Genovese family and through Mr. Magrini and Masselli the Schiavone Company was "closely aligned" with that same crime family.[58] Masselli formed the company. His partner was Joseph Galiber, a black New York State Senator.[59] Senator Galiber was allegedly brought in as a partner not only because he was a minority but also because of his political connections.[60] They called the company, Jo-pel (after *Jo*seph Galiber and William *Pel*legrino Masselli). The drawback was Jopel had *no* equipment. Louis Nargi, a Schiavone subcontractor, however, had equipment.[61]

Mr. Nargi said Masselli told him of his earlier conversation with Mr. Magrini and that Nargi would be Masselli's "silent partner" in Jopel receiving 70% of the profits. Masselli told Nargi that Masselli and Senator Galiber would divide the rest. At least that is what Masselli originally told him.[62]

Mr. Nargi alleged that Mr. Masselli formed the company "merely as a device to circumvent [the] law requiring [the] Schiavone [Com-

---

[53] President Johnson's Executive Order 11246 provided: (1) that the Secretary of Labor administer that part of the Order concerned with "non-discrimination" in federally assisted construction contracts, (2) that every such construction contract state among other things that the contractor will not discriminate in employment and that the contractor will comply with the terms of the Executive Order and "the rules, regulations and relevant orders of the Secretary of Labor", (3) that the contractor will permit the Secretary of Labor to have access to his books "for the purposes of investigation to ascertain compliance with such rules, regulations and orders", (4) that the contractor's failure to comply with the non-discrimination clauses, as well as rules, regulations, or orders of the Secretary may result in the cancellation of the contract and the contractor "may be declared ineligible for further Government contracts", and (5) that the contractor shall insure that any subcontractors bind each subcontractor to the same terms as the contractor. The order also provides that the Secretary of Labor may approve additional contract provisions as he "deems appropriate" to enforce the government's obligations and may delegate any function "except authority to promulgate rules and regulations of a general nature."

[54] Title 42, United States Code, Section 6705 (f).

[55] *Id.*

[56] D. Tr. 336.

[57] Ex. 23, App. 344–45.

[58] Ex. 13, App. 113.

[59] Only the year before, a federal grand jury sitting in Manhattan charged that State Senator Joseph L. Galiber conspired with others to defraud the federal government by buying a building for $75,000 and just hours later re-selling it to a federally funded anti-drug agency for $350,000. See "Galiber Pleads Not Guilty", N.Y. Times, September 9, 1977, Section 2, at 3. Mr. Galiber was, however, acquitted of these charges by February 1978. See Arnold Lubasch, "Galiber Acquitted With Two Others of Fraud Charges", N.Y. Times, February 11, 1978, at 1.

[60] Ex. 23, App. 345.

[61] Ex. 23, App. 346.

[62] Ex. 23, App. 344–345.

pany] to give a certain percentage [10%] of their [MTA] subcontracts to minority companies [MBEs]".[63] Donovan testified that Jopel did get "on an approved list of the Metropolitan Transit [sic] Authority of the City of New York as an MBE contractor".[64] The Committee does not know what, if anything, State Senator Galiber did to get Jopel on the list.

According to Donovan, the Schiavone Company assigned Nargi's contract to Jopel.[65] Nargi said the contract assigned was the Archer Avenue subway project in Queens, New York.[66] After the Schiavone Company agreed to the assignment it loaned Masselli $200,000 interest free; Mr. Donovan co-signed the check in that amount.[67] According to Mr. Donovan, Jopel thereafter worked not one but several Schiavone Company projects.[68]

After Nargi's contract was assigned, he said he "lost total control of his company", had "a heated argument with Masselli" and finally just "walked away" from what had been his business. The reason was simple. Nargi said he "realized he could not win". "Masselli", he said, "knows all sorts of dangerous people" including a "made guy" and "made guys hurt people".[69]

Thus Masselli, who assumed Nargi's contract with Schiavone Company's approval, also assumed his equipment and his books. Nat Masselli, an accountant and William Masselli's son, "took control of the books." [70] The legitimacy of Jopel and the "takeover" of Nargi are still under investigation today, five years later.[71]

b. The Masselli tape references to the Schiavone Company and its officers including Mr. Donovan

By the end of 1978, the Masselli investigation developed "facts and circumstances" sufficient for the government to request that the court issue an order, permitting the FBI to "tap" his telephone wire, monitor his conversations and tape them.[72] The relevance of the so-called Masselli tapes to the current investigation by this Committee is that during the six months the FBI monitored Mr. Masselli's conversations, he referred to Mr. Donovan by name in six different conversations but the FBI did not mention any of them until one "pertinent" tape reference—that Masselli was going to "a social function" with Mr. Donovan—was disclosed in a Time Magazine article in June 1981.[73]

i. The original request

Before the government formally requested a court order, the Department of Justice and the FBI separately considered the merits of a wiretap of Mr. Masselli. Mr. Mullen testified that the wiretap application was probably "processed simultaneously by the Department of

---

[63] *Id.*
[64] D. Tr. 336.
[65] *Id.*
[66] Ex. 23, App. 343.
[67] Special Prosecutor's Report, dated June 25, 1982, pp. 544, 556 [hereinafter referred to as "Spec. Pros. Rept. —"]. The Schiavone Company later made another $100,000 loan also interest free to Masselli. Ex. 25, App. 357, 358.
[68] D. Tr. 350.
[69] Ex. 23, App. 345–47.
[70] Ex. 23, App. 347. For a further discussion of the details of how Jopel billed Schiavone Company for the equipment it "rented" from Nargi, *see* Ex. 25, App. 359.
[71] Assistant Attorney General McConnell letter to Senators Hatch and Kennedy, dated December 3, 1982.
[72] Title 18, United States Code, § 2518 (b).
[73] See notes 100–01, 187–88, *infra*, and accompanying text.

Justice and FBI Headquarters." [74] It ran up the FBI "chain of command" past the Assistant Director to the Executive Director and finally "to the Director of the FBI, who personally signs it." [75] According to Mr. Mullen, "The Director approves every wiretap request." [76] The U.S. District Judge in the Southern District of New York granted the government's request and authorized the FBI's wiretap of Masselli to start January 5, 1979 for thirty days—the law prohibited any longer period.[77]

ii. A note on ELSUR, the FBI's principal filing system for references found on a wiretap (including the Masselli wiretap)

Once the Masselli wiretap began, according to Mr. Adamski, the case agent kept a record of the names of the persons overheard.[78] The names overheard were manually entered on index cards in accordance with a filing system called *El*ectronic *Sur*veillance Index System ("ELSUR").[79] "It is *mandatory*", Adamski said, "to put the names of [the] *participants* into the [ELSUR] system (emphasis supplied)." [80] Mullen said that the Masselli tapes however departed "from standard procedure". The Special Agent, Jim Moody, in charge of the case, considered the Masselli tapes "so important" that he recorded not only the participants as required, but also "*everybody* mentioned" and "*every* company" mentioned (emphasis supplied), eventually 24,000 references.[81] According to the Department, "Every field office keeps an ELSUR Index and [the] FBI Headquarters maintains its own ELSUR Index that includes the names found in the indices of *all 59 field offices* (emphasis supplied)." [82] The Masselli tape references were therefore available in only two places: (1) New York's field office, and (2) the comprehensive ELSUR files at FBI Headquarters in Washington, D.C. No place else. According to Mr. Mullen, not only were the Masselli tape references retained in ELSUR, the references were also entered into "a computerized index" called "Investigation Support Information System" ("ISIS").[83]

iii. Masselli refers to Mr. Donovan on January 24 and 27, 1979

On January 24, 1979, the FBI overheard Masselli's first mention of Raymond Donovan just days after the Miami Superbowl game. Masselli said, "I get along good with all the [Schiavone Company] bosses." The other person said, "Yeah" and Masselli volunteered who he got along with including "Joe DiCarolis, Dick Callahan, *Ray Donovan*, Al Magrini, [and] Gerry Liguouri (emphasis supplied)." [84] Mr. Masselli did not mention that he got along with Mr. Liguouri "good" enough to buy him tickets to the Miami Superbowl that he had just at-

[74] App. 468.
[75] *Id.*
[76] Unless of course the Director is absent. App. 469. But as noted here (*see* notes 77–108, *supra*, and accompanying text), the Masselli wiretap was approved on six occasions; presumably the Director was present to consider most if not all six of these wiretap applications.
[77] Title 18, United States Code, § 2518 (5); Ex. 41, App. 697; App. 116.
[78] App. 586.
[79] App. 535–36.
[80] App. 536.
[81] App. 473, 294.
[82] Assistant Attorney General McConnell letter to Chairman Hatch regarding ELSUR and other matters, dated December 3, 1982, at 3.; *see also* App. 537.
[83] App. 472–75; Ex. 22, App. 294. It is not clear that I.S.I.S. is the same computer system employed by the Special Prosecutor to "confirm" the six tape references to Mr. Donovan that he found. For a discussion of the computer system that he used, see notes 284–85, *infra*, and accompanying text.
[84] Spec. Pros. Rept. 513.

tended with State Senator Galiber and others including Robert DeFilippis and Ed Garofola, the owner of the Big J Trucking Company.[85] Mr. Masselli did, however, tell the other party something of his business, "We have right now the [subcontract for the] excavation of the place for the [subway] shaft [on 63rd Street and Second Avenue] and "we got all the trucking".[86]

Three days later on January 27, the FBI overheard Mr. Masselli refer to "Ray Donovan" again by name.[87]

iv. Mr. Masselli refers to Mr. Donovan on March 15, 1979

Since the wiretap's authority would expire in early February, the FBI "chain of command" considered a thirty-day extension. According to Mullen, the FBI "processed [it] as almost a new application." [88] The application for extension necessarily contained a summary of the "material obtained" thus far on the wiretap.[89] The Director reviewed the "material" and agreed to extend the wiretap for another 30 days and the court authorized it through February. This sequence of summarizing the results, requesting and authorization was repeated again, extending the wiretap to early April 1979.

On March 15, 1979,[90] the FBI overheard Masselli, awaiting the arrival of State Senator Galiber, say that Jopel did "most of the subcontracting work [for Schiavone Company] as a minority contractor [MBE]." The other party (unidentified) talking to Masselli, said "Know 'em well", referring to the Schiavone Company officers.[91] Mr. Masselli said, "Well I guess you know" and then named several Schiavone Company officers including "Ray Donovan".[92] Masselli repeated in this conversation, "Right now we're [Jopel] doing the [subway] shaft on 63rd Street and 2nd Avenue"; he also said, ". . . the last contract was [one] hundred eighty-five million dollars that the [Schiavone Company] got." [93]

v. Mr. Masselli refers to Mr. Donovan on June 4, 1979

The Director approved and the court authorized additional wiretap extensions for April, May and then June.

By May 1979, Mr. Donovan had agreed to raise funds for the Presidential campaign of Ronald Reagan.[94] On June 4, 1979, the FBI overheard Masselli return a call to Jack Frost at Schiavone; Mr. Frost was Schiavone's purchasing manager.[95] Masselli held the phone while Frost finished another call. When Frost got on with Masselli, he said, "Bill [Masselli], I got, I, I, don't have my uh Schiavone Construction Company hat on right now." Masselli said, "I like that" and Frost explained that, "Ronnie [Schiavone] and ah Ray Donovan have a club

[85] Spec. Pros. Rept. 511, 559, 561–62. It was alleged both that Mr. DeFilippis was involved with organized crime and under investigation and that Mr. Garofola had an arrest record and an FBI number. App. 598; note 180, *infra*. Mr. Garofola's company is the subject of an allegation received by the FBI in January 1981 but not given to the Committee until December 1982; it is discussed further in notes 180–81, *infra*, and the accompanying text. It was later alleged that Mr. Donovan attended the Miami Superbowl in 1979 with Masselli. For a discussion of this last allegation and the FBI investigation, see notes 168 and 202, *infra*.

[86] Spec. Pros. Rept. 514.

[87] *Id.* at 515.

[88] App. 470.

[89] *Id.* at 471.

[90] Spec. Pros. Rept. 517.

[91] *Id.* at 519.

[92] *Id.*

[93] *Id.*

[94] Spec. Pros. Rept. 675.

[95] *Id.* at 520.

going" and that it was called the "Ronald Reagan for President Club." Masselli repeated, "I like that." [96]

Frost said, "Ronald Reagan is coming to Ray's house on Monday [June 11, 1979] . . . [and] I'm not invited and your're not invited . . . but what [inaudible] are going to do . . . is give this guy here, you know, a wad. We're going to give him . . . green." Frost never modified the impression that the contribution should be cash. Masselli said, "I understand." [97] Mr. Frost told Mr. Masselli it was a thousand dollar club and that "there's no problem with the legality of it." [98] Masselli repeated, "No problem." Frost said he needed the money by noon Friday. Masselli said he would have it to him by Wednesday. Masselli said, "I'll give it to somebody to give to you." [99]

vi. On June 26, 1979, Mr. Masselli refers to a social function

On June 26, 1979, the FBI overheard William Masselli say that he had been invited to a social function with Mr. Donovan the evening before.[100] Masselli told his son Nat that Magrini invited him to the function, said that he "got two tickets", and to "come with me [Magrini] now". Magrini told Masselli "we're gonna go pick up Ronnie [Schiavone] and uh *Ray Donovan* and then we're gonna go right up". Masselli agreed instead to meet them at the function. So Magrini told Masselli that he would "leave two tickets at the door" for Mr. Masselli and Mr. DeFilippis", also "alleged to have Organized Crime affiliation" and to be under investigation by the FBI.[101] Masselli told his son that he went with DeFilippis and that Mr. Magrini told him at the dinner that in "30 to 45 days, we'll [Jopel] go right to work on that [new job as subcontractors] if we [Schiavone Company] get the contract".

vii. Mr. Masselli refers to Mr. Donovan on June 30, 1979

On June 30, 1979, the FBI overheard William Masselli tell his son Nat that, "Schiavone got the job" and "he's gotta go to us." [102] Masselli explained, "We got the dump there", referring to the fact that excavated dirt had to be dumped and Jopel had the place to dump.[103] Mas-

[96] *Id.* at 521–22.

[97] *Id.*

[98] Mr. Frost may have been wrong. The federal election regulations plainly state in relevant part that, "a corporation, or a separate segregated fund established by a corporation *is prohibited from soliciting contributions* to such a fund *from any person other than its stockholders and their families and its executive or administrative personnel and their families.*" Mr. Masselli was not a stockholder, personnel or family to personnel; he was instead a subcontractor. Title II C.F.R. § 114.5 (g) (1); see also 2 U.S.C. § 441b.

[99] Spec Pros. Rept. 522–23.

[100] The complete transcript of this conversation, only made available to the Committee in June 1982 in the Special Prosecutor's Report, was marked as an Exhibit during the sworn testimony of Mr. Mullen. Ex. 24, App. 350–351.

[101] Mr. DeFilippis also allegedly attended the Miami Superbowl with Mr. Masselli and others in January 1979. This and his alleged organized crime ties are discussed in note 85, *supra*, and the accompanying text.

[102] Spec. Pros. Rept. 526.

[103] Jeremiah B. McKenna, Counsel to the New York State Select Committee on Crime recently testified before the U.S. Senate Permanent Subcommittee on Investigations that Mr. Masselli's conversation with his son on June 30, 1979 obviously referred to Schiavone hiring Jopel "to remove the excavated dirt". Mr. McKenna stated, however, that the "implication of this conversation was that [Jopel] had sufficient control over the available dumps that any contractor needing excavation work had to come to Masselli." He stated, "The only dumps used by Masselli were the city landfills." Mr. McKenna stated Jopel was "sell[ing] the dirt to the New York City Sanitation Department as cover for their landfill operations". "Environmental regulations", he said, "required that each day the garbage dumped at a landfill be covered with four to six inches of dirt." Jopel supplied that "cover" of dirt. See generally the prepared Statement of "Organized Crime in the Toxic Waste Disposal Industry" by Jeremiah B. McKenna, Counsel to the New

(Continued)

selli told Nat he "spoke to [Phil] Brady [then Director of Real Estate for MTA] too." Masselli assured Nat that "We're all set there." William Masselli mentioned Donovan again. Nat suggested his father call Vice-President Magrini. Masselli said he would "call him [Magrini] at home." Masselli said, "I got his home [phone] number." [104]

viii. The Masselli wiretap is terminated

The June 30th reference to "Donovan" is the last one known to the Committee before the Masselli wiretap expired on July 7, 1979.[105] The Committee does not know why the wiretap was terminated. Mr. Mullen testified that he was aware "of some facets" of the TUMCON investigation "perhaps throughout 1979, or at some period in '79" partly because, he said, "there were briefings or discussion about TUMCON", and "perhaps both [by] memorandum and briefings" he became aware of "some information contained in the Masselli tapes." [106] Mullen said, however, that he had nothing to do with ending the wiretap.[107] After the "tap" terminated, Mr. Mullen became the Assistant Director of the FBI's Criminal Division.[108]

c. The FBI notifies Messrs. Masselli, Galiber and others that they are under investigation

Once a wiretap ends, the FBI must notify those "named in the [wiretap] order of application", certainly Messrs. Masselli and Galiber and "such other parties to intercepted communications as the judge may determine", perhaps Schiavone Manager Mr. Frost, that there has been a wiretap, its duration and that their conversations have been intercepted (if in fact they were).[109] The FBI must give such notice no later than ninety days after the wiretap is terminated.[110] There is however a "good cause" exception to this ninety-day rule and apparently the FBI made such a "showing" and availed itself of this exception in the TUMCON investigation, for notice to Messrs. Masselli, Galiber and others apparently did not issue until about February 9, 1980.[111] But on that date, the investigation was no longer a secret from the investigated.

d. The N.Y. Times discloses to the public that Messrs. Masselli, Galiber and others are under investigation

About the time the investigated knew, the public learned. On February 10, 1980, in a front page *N.Y. Times* story, it was reported that State Senator Galiber was, according to "law enforcement officials", the "principal subject" of a political corruption investigation, that he had been overheard in "conversations recorded through court-approved wiretaps", and that his "remarks about several politicians" had caused "broadening of the inquiry, originally begun as a narcotics investigation".[112] Masselli was not mentioned in the first *N.Y. Times* article.

York State Select Committee on Crime, before the U.S. Senate Permanent Subcommittee on Investigations, 98th Congress, 1st Session. Schiavone's contract with the MTA reportedly provided that any landfill was supposed to go to the city at no cost. Jopel, however, reportedly charged the city nearly $500,000 for landfill dug from the 63rd Street Subway project. D. J. Saunders and M. Kramer, "Land Filling Probe", N.Y. Daily News, August 27, 1983, at 3.

[104] Spec. Pros. Rpt. 526–533.

[105] *Id.* at 511.

[106] App. 476, 122, 121.

[107] App. 211.

[108] App. 3, 383.

[109] Title 18, United States Code, § 2518(8)(d).

[110] *Id.*

[111] *Id.*

[112] Howard Blum, "FBI Subpoenas 10 in Bronx Inquiry Involving Narcotics," N.Y. Times, February 10, 1981, at 1.

On February 11, the *N.Y. Times* reported that Mr. Galiber had been among approximately 25 political figures and alleged members of organized crime served subpoenas for their financial records. The *N.Y. Times* reported that David E. Cassens, an FBI spokesman in Washington, D.C. "acknowledged that he was aware of the Bronx inquiry, but refused to comment on details." There was still no mention of Masselli.[113]

On February 14, 1980, the *N.Y. Times* said that not only State Senator Galiber but also Mr. Masselli had been notified that their telephone conversations had been intercepted during court-approved electronic surveillance. The *N.Y. Times* also reported that day that Assistant U.S. Attorney Michael Ross of the Southern District of New York assigned to that U.S. Attorney Offices' Official Corruption Unit, presented evidence to a federal grand jury.[114]

On March 22, 1980, the *N.Y. Times* ran its fourth and last story of this series, purportedly based on legal documents and interviews with grand jury witnesses, stating that "central to this inquiry" was "a Bronx based construction concern, Jopel" and both of "its principal officers", Masselli and Galiber.[115] The report said that unidentified construction company records that reflected dealings with Jopel had been subpoenaed by the grand jury. The Schiavone Construction Company was not mentioned in the article. The *N.Y. Times* reported that the investigation "began late in the winter of 1978 with its intended focus on the alleged use of political influence in obtaining construction contracts." Specifically, the article said, "Some Bronx politicians allegedly used their positions to help certain contractors receive work on city and state projects, including excavation work on the Second Avenue subway"; State Senator Galiber represented a portion of Bronx County. The article continued, "Often, according to the Federal investigators, these contractors would not have won the contract through competitive bidding, but would be hired as subcontractors by the firm officially awarded the contract." [116]

B. The nomination of the Secretary of Labor

There is no evidence available to this Committee that as of November 1980 President-elect Ronald Reagan, his transition team or any member of the Senate knew of any of the investigations of the Schiavone Company known to the FBI. The White House, in the first instance, and the Senate afterwards had to look to the FBI to disclose the investigations."

On November 28, 1980, the President-elect signed a written understanding with the Department providing that the FBI would conduct "file reviews or background investigations" at the request of the President-elect or his designee.[117]

---

[113] Howard Blum, "Galiber's Attorney Tells of FBI Call," N.Y. Times, February 11, 1980, Section 4, at 10.

[114] Ex. 14 (Howard Blum, "Bronx Corruption Inquiry Pursuing Financial Data," N.Y. Times, February 14, 1980, at B12), App. 135.

[115] Ex. 15 (Howard Blum, "90 Hours of Tape Spur Bronx Crime Inquiry: Grand Jury is Studying Evidence of Murder Plots and Drugs", N.Y. Times, March 22, 1980). App. 136.

[116] The article also referred to the FBI questioning a "Mr. Nargi" in the spring of 1979 but it developed that the FBI first questioned the "wrong" Mr. Nargi. The Mr. Nargi they wanted to question was supposed to be killed, according to the Masselli wiretap. The FBI report of the interview of Mr. Nargi, available to this Committee (Ex. 23, App. 343) is dated February 9 and 12, 1980 and in that interview, Mr. Nargi said that he "walked away" from his business because he was afraid of the "made guy" that Masselli knew. App. 347.

[117] The Justice Department regulations provide in relevant part that the FBI is authorized to conduct personnel investigations. 28 C.F.R. Part O, Subpart P, Section 85(c). The written understanding (Ex. 50) was introduced during the sworn testimony of Mr. Adamski and is reproduced in the Appendix (App. 843 *et seq.*).

For the U.S. Senate to get any information, following the nomination, it only had to "ask"; that is what Mr. Mullen told a Congressional panel in early 1980. [118] It appeared to be as true in 1981 when FBI Director Webster gave information directly to the Committee, particularly on January 7 [119] and January 14,[120] noting that the FBI was supplying this information "in response" [121] to the Senate Committee's request.[122] It is only in 1982, after the Committee discovered that the FBI had not given the Committee all the information that it had, that the FBI claimed that it was not its responsibility to supply information directly to the Committee.[123]

1. The check for Mr. Donovan's name uncovers no record

In November 1980, President-elect Ronald Reagan informed Raymond Donovan that he expected to nominate him to his cabinet. As required by the understanding the President-elect had with the FBI, Mr. Donovan gave his "written consent" to "authoriz[e] the FBI to conduct an [FBI] file review and investigation".[124]

As a preliminary matter, before the President-elect announced publicly his intention to nominate anyone,[125] he requested that the FBI run a "name check", that is, look for the person's name in its general indices.[126]

On December 2, Fred Fielding, the President-elect's Ethics Counsel, requested that Mr. Adamski determine if the FBI had any record of Mr. Donovan's name in its general indices. Mr. Fielding made this request orally. Mr. Adamski had the indices checked and reported orally that Mr. Donovan was not mentioned.[127] Only then did Mr. Fielding request in writing that the FBI check its general indices for Mr. Donovan's name.[128] On December 4–5, 1980, the FBI checked its files and found "no arrest record" nor any other record "identifiable with the subject of the name check request".[129]

2. After speaking to the transition team, FBI Director Webster conducts an additional search that uncovers the "HOFEX" references to the Schiavone Company

On December 5, Mr. Edwin Meese, the President-elect's Chief of Staff met with the FBI Director for the first time. Mr. Meese later characterized its as a "kind of get-acquainted meeting".[130] Director Webster later stated that "neither he nor Edwin Meese had any *specific information* concerning possible organized crime connections *involving Secretary Donovan.*" [131] It is not known to this Committee if

---

[118] On March 17, 1980, Mr. Mullen was asked "if he [the President] didn't [want any other background checks], it would be up to the Senators to confirm. If they [the Senators] wanted something, they could request it [of the FBI] and they could get additional [background checks] too, could they not?" Mullen agreed that was "correct." Ex. 4, (Hearings on FBI Oversight before the Constitutional Rights of the Committee on the Judiciary, House of Representatives, 96th Congress, 1st and 2d Sessions 248.), App. 23.

[119] Ex. 9, App. 82.

[120] Ex. 18, App. 194.

[121] App. 82, 195.

[122] Ex. 8, App. 75.

[123] See notes 317–19, *infra*, and accompanying text.

[124] Ex. 50, App. 843.

[125] Mr. Mullen testified that "*normally* in connection with a nomination we [the FBI] are asked to do what is called a name check, and that is a review of our indices: [one] here in Washington and [two] *normally* at the location where the individual is residing. And *that is all* we are asked to do at the outset *before the applicant* is *nominated*, I take it, and then there is a full field investigation (emphasis supplied)." D. Tr. 271.

[126] For a discussion of the general indices, see notes 46–48, *supra*, and accompanying text.

[127] Ex. 16(A), App. 156.

[128] *Id.*; App. 508.

[129] App. 513–14.

[130] Special Prosecutor Supplemental Report, issued September 13, 1982 at 14 [hereinafter referred to as "Spec. Pros. Supp. Rpt. —"].

[131] Id.

either then had such information about Mr. Donovan's firm, the Schiavone Company. As the FBI had completed its check for Donovan's name by December 5,[132] Director Webster widened the breadth of the FBI's search to include other FBI indices as well as the Schiavone Company. Director Webster, according to his notes, agreed "to do [a] full field investigation of Mr. Donovan if [the FBI found] any OC [Organized Crime ties]."[133] A nominee's association with "disreputable" persons or organizations begs the question, "what does he know about them" and "what influence, if any, do they exercise over him?" The FBI's guidelines say these questions must be answered.[134]

According to the Director's memo to Mr. Mullen, he tried to answer them. Director Webster called upon Mr. Mullen, by then his Executive Director, and Oliver Revell, his Assistant Director for the Criminal Division (and Mullen's subordinate). Both Mullen and Revell had experience investigating organized crime. Revell testified before a Congressional panel that he had "been associated with the investigation of organized crime since 1965".[135]

Director Webster's memorandum to Mullen said that the FBI had reviewed "*all* our indices" and checked "*all* field offices" (emphasis supplied).[136] The Director said the investigation uncovered no suggestion of "any criminality or organized crime associations". The Director however had been "advised" (he only identified Messrs. Mullen and Revell) that Mr. Donovan's firm, the Schiavone Company "appeared a *number of times* in our HOFEX [Hoffa Execution] case".[137]

If the FBI searched its central files not only for Mr. Donovan's name but also for the Schiavone Company, why didn't the FBI uncover that Schiavone was the "subject" of investigation in the Masselli or Gross investigations, if not the Kantor investigations?

On December 12, 1980, Director Webster returned Mr. Meese's call to him and reached instead an Assistant, Pendleton James. Mr. Fielding was with Mr. James. Director Webster told Mr. James that Schiavone "had appeared a number of [unspecified] times in reports in our HOFEX case".[138] It is unknown whether Mr. James or Mr.

---

[132] Ex. 27, App. 514.

[133] Ex. 6, App. 49.

[134] The FBI's investigative guidelines provide that there shall be careful scrutiny of each applicant's associations, that is, the "types of persons, groups, organizations, or movements with which the person has been associated, with particular concern as to whether any of his associations have been of disreputable or disloyal nature." FBI Internal Manual of Investigative Operations and Guidelines, "Applicant and Employee Investigations Conducted for Other Government Agencies—General Instruction." § 17–14. The object of the investigation is to "ascertain [the] degree of association and awareness on [the] part of [the] person under investigation [the applicant] of [the] activities of [the] questionable individual" and "the extent of influence [the] questionable individual exercises over [the] applicant." § 17–6. 12 : *See also* App. 12–38.

[135] Hearings on Organized Crime and Use of Violence before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, Ninety-sixth Congress, 2d Session 82 (Testimony of Oliver R. Revell, then Inspector, Deputy Assistant Director, in Charge of Organized Crime and White Collar Crime, Criminal Investigation Division) [hereinafter referred to as "Revell Test. —"]

[136] Ex. 3, App. 10.

[137] *Id.* The HOFEX case was the FBI investigation of the kidnapping and execution of former Teamster President James R. Hoffa on July 30, 1975. Ralph Picardo, Teamster member for 20 to 30 years and the principal FBI informant in the HOFEX investigation, reportedly told the FBI that Salvatore and Gabriel Briguglio and Thomas Andretta planned the kidnapping and aranged for Hoffa's burial at Philip Moscato's dump in New Jersey. Ex. 7 (Agis Salpukas, "New Jersey Convict is Called Informer on Hoffa Suspects," N.Y. Times, January 31, 1976, at 26), App. 62. Revell once testified, without specifying who, that "there are allegedly bodies somewhere within the New Jersey turnpike." Revell Test. 105. Recent Senate Testimony has corroborated what Picardo told the FBI, about the Hoffa killing. Picardo, the witness in the HOFEX case, ironically does surface in the Donovan background investigation. For further discussion of Picardo's allegations about Donovan, see notes 191–96, *infra*, and accompanying text.

[138] Ex. 3, App. 10.

Fielding asked what the HOFEX investigation was and, if they discovered that it involved Hoffa's execution, whether they inquired of the Director why Schiavone was mentioned at all in such an investigation.

Mr. Meese himself called Mr. Webster back that same afternoon "to be certain there were no ongoing investigations *involving Donovan* (emphasis supplied)". Webster confirmed that there were none of Mr. Donovan and that he "knew of nothing to hold up the nomination (emphasis supplied)".[139]

On December 15, Director Webster informed Mullen by memo of the investigation, the conversations the Director had, and that the Schiavone Company "had appeared a number of times in reports in our HOFEX case."[140]

3. The President-Elect Announces His Intention to Nominate Mr. Donovan

On December 16, 1980, the President-elect announced his intention to nominate Mr. Donovan to his cabinet as Secretary of Labor.[141]

4. The Kantor Investigation Surfaces in Press Accounts

Almost immediately after Mr. Donovan's nomination was announced, Alex Michelini a reporter for the *New York Daily News* called Mr. Donovan to ask whether he had been questioned by federal authorities in the sixties in the Kantor case.[142] Donovan repeatedly refused to talk to Michelini. Asked "specifically" about a meeting with federal authorities, Donovan reportedly said, "I refuse to discuss it". Donovan then reversed himself and agreed to meet Michelini but not until December 20, a Saturday.[143]

Late Friday afternoon, Mr. Fielding visited "privately" with Director Webster; according to the Department, it was a "social call".[144]

At the last moment, according to Mr. Michelini, Donovan canceled the Saturday meeting saying, "I have nothing to say to you. I will not meet."[145]

On December 22, the following Monday, Donovan attended a news conference as one of several new cabinet choices. At the conference, Donovan was asked if he had been questioned by federal authorities; Donovan said that he had been. Donovan was asked about the payment to Kantor; Donovan said, "I do not know the details of that but I can get them if you want."

In Tuesday's edition of the *New York Daily News*, Michelini wrote that Kantor said he washed political payoffs at the request of the mob, that Schiavone made a payment to Kantor, that Schiavone's "financial records were subpoenaed", and that "Donovan, accompanied by Company attorney Joseph Nolan, met with officials of the Newark U.S. Attorney's office in late 1969—only weeks before the indictment of

---

[139] *Id.*
[140] *Id.*
[141] Peterson and Kaiser, "Haig Selected for State; Donovan Picked for Labor," Washington Post, at A1; Lublin, "Labor Agency's New Chief, Donovan is Seen Sympathetic to Unions, Business," Wall Street Journal, at 5; Sullivan, "Skilled Negotiator With Labor: Raymond James Donovan," N.Y. Times, December 17, 1980, at A32.
[142] Alex Michelini, "Ron's Labor Choice Was Quizzed in 60s Probe," New York Daily News, December 3, 1980, at 5 [hereinafter referred to as "News Article"].
[143] *Id.*
[144] Assistant Attorney General McConnell's letter to Chairman Hatch, dated September 17, 1982 at 3.
[145] News Article.

[New York Mayor] Addonizio and the others". Michelini said that "A source familiar with the incident reported that the Schiavone Company was 'putting money into the Kantor account.' But he added that Donovan obviously explained it satisfactorily [to the U.S. Attorney]. It was a small account that didn't connect. It was too small to be concerned about." [146]

5. Mr. Fielding requests a full-field investigation of Mr. Donovan

After Mr. Fielding met with Director Webster on December 19, he had a number of "unrecorded telephone and personal conversations" with Adamski. Not until more than two weeks after Donovan's nomination was announced, on the day before New Years Eve, did Fielding ask Adamski to run the full-field investigations of Labor Secretary-designate Donovan.[147] Adamski said it was 'entirely up to Mr. Fielding to ask for the full-field".[148] Fielding however did not just ask for Donovan's investigation. At the same time, he sent over 14 other "*major position* nominee applications" to Adamski. He requested that each and every one of the 15 investigations "be completed and reported by January 5, 1981"; four of those six days were New Years Eve Day, New Years Day, Saturday, and Sunday.[149]

Donovan also supplied the "Security Investigation Data" on November 30. Just over his signature certifying the truth of what he said was an instruction that he should "check back over the form to make sure that all the questions have been answered 'fully and correctly". Donovan however did not answer one question, that asked, among other things, whether he had ever been "held for *investigation* or *questioning*?" [150]

6. The next day the Committee requests the FBI to report on the Kantor investigation and any other investigation involving Donovan or his company

Even if the FBI failed to read what the Committee read about the Kantor investigation, Committee Chairman Orrin G. Hatch and the Ranking Minority Member, Senator Edward M. Kennedy, certainly put the FBI on notice by citing the press reports about Kantor in a letter to Director Webster on December 31, 1980, and requesting that the FBI investigate the matter.[151] Chairman Hatch and Senator Kennedy asked for "a *report immediately* regarding all information the FBI *has already assembled*" in its Donovan background investigation. If the FBI's background investigation had not encompassed all Justice Department "inquiries" relating to Donovan or his company, the Senators asked that one "be *initiated immediately* and a report be provided to us [the Senate Labor Committee] *by* January 7, 1980 (emphasis supplied);" [152] January 7 was the day the Committee scheduled for Mr. Donovan's confirmation hearing. Mr. Adamski, responsible for Mr. Donovan's background investigation, later swore that he read this letter.[153]

---

[146] *Id.*
[147] Ex. 16(A), App. 156.
[148] App. 580.
[149] App. 156; Ex. 39, App. 562..
[150] FBI Standard Form 86 (Security Investigation Data for Sensitive Position) signed by Raymond J. Donovan, dated December 30, 1980.
[151] Ex. 8, App. 75.
[152] *Id.*
[153] App. 572.

7. The FBI advises the transition team that its investigation is "favorable and complete" without mentioning the Kantor investigation; the FBI discloses the Gross investigation to the transition team but provides few details

On January 5, 1981, the FBI reported the results of its background investigation to the transition team, but not the Committee. The FBI concluded that "Donovan's [background] investigation [was] favorable and *complete* (emphasis supplied)" without even so much as a reference to the Kantor case in the memorandum purportedly discussing "the results" of its investigation.[154] Assistant Director Revell wrote Mr. Fielding a cover letter that alerted him that the attached memorandum discussed an "investigation [other than Kantor] involving Schiavone Construction Company, Secaucus, New Jersey" and it "is an ongoing investigation *and is not anticipated to be completed in the near future* (emphasis supplied)".[155] The last paragraph of the five page memo said that "the *central files* of the FBI, including the files of the Identification Division were checked" and while they found "no additional pertinent information concerning Mr. Donovan", they discovered that Schiavone "is the *subject* of current FBI investigation under Federal Statutes of Racketeer Influenced Corrupt Organizations ["RICO"] and Labor Management Relations Act, 1947 (emphasis supplied)".[156] This investigation was therefore discovered in the same files, according to Director Webster's memo to Mullen, that had been checked in December. Mr. Revell did not say—at least in writing—why the mid-December investigation conducted for Director Webster had not unearthed this active FBI investigation of the Schiavone Company. The memorandum vaguely described the investigation failing to say that the investigation was in New York, rather than in New Jersey, or that the Schiavone Company was the "subject" of investigation because Gross, a Teamster Representative, was allegedly extorting the Schiavone Company. Moreover, the report impliedly discredited the investigation, stating that it was "based upon allegations *of* a union president who has misused the pension and welfare fund and received extensive kickbacks for approving loans in awarding *sweetheart* contracts (emphasis supplied)".[157] If the Committee had relied on this report alone, and not conducted its own investigation, it would not have known that the Schiavone Company had allegedly been extorted.

8. The Committee adjourns Mr. Donovan's confirmation hearing because the FBI failed to deliver on time its report of the Kantor investigation

The Committee Chairman and Ranking Minority Member read the "Gross" memorandum but not the cover letter to Mr. Fielding. They also wanted the Kantor report they had requested "by" January 7 but on January 7 they still did not have it. The Committee therefore adjourned Mr. Donovan's hearing scheduled for January 7 to January 12, the succeeding Monday. Mr. Adamski completed the report but did not deliver it to the Department of Justice until 5:05 p.m. that day, January 7.[158]

---

[154] Ex. 10, App. 93.
[155] *Id.*
[156] *Id.* at 88.
[157] *Id.* Moreover, when the FBI reported this information to the Committee on about January 23, after Mr. Donovan had appeared before the Committee on January 12, 1981, and testified about the Gross investigation, this sentence—and therefore its import—was changed from the "allegation *of* a union president" to "allegations *that* a union president has misused the pension . . ." and so forth. *Compare* Ex. 10, App. 93, and Ex. 20, App. 220; *see also* note 222, *infra*.
[158] Ex. 9, App. 82.

When Mr. Adamski's report "in response to [the] request of [the] Senate Labor and Human Resources Committee" did arrive,[159] it was not much help since it both misstated [160] and overlooked [161] the material facts in the Kantor investigation. Once again, if the Committee staff had not investigated the matter itself, it would not have had the details.

9. Press accounts of the adjourned Donovan hearing likely prompted an informant to call the FBI in New York; that call led to the discovery of the Masselli investigation and the taped reference to Mr. Donovan

On January 8th, the *Washington Post*, *Washington Star*, *New Jersey Star Ledger* and *N.Y. Times*, among other papers, reported that Mr. Donovan's confirmation hearing had been delayed until January 12th because the FBI report had not yet arrived.[162] An informant in New York, who presumably read the *N.Y. Times* report that day, called the FBI's New York office to say that Donovan "may possibly have LCN [La Cosa Nostra] affiliations." [163] Mullen said that as "a general rule", an agent does not talk to an informant in a background investigation.[164] The New York FBI office checked its computerized file, ISIS—the first time that had been done in an applicant investigation—and uncovered the Masselli tape reference to Donovan attending a social function with Messrs. Masselli and Magrini.[165]

The following five pieces of information that directly relate to the tape reference were amassed by the FBI from independent and reliable confidential sources from January 8 to 10, 1981: (1) that Mr. Masselli is a self-admitted "soldier" in the Genovese Crime family, (2) that Mr. Masselli heads Jopel (a Schiavone subcontractor), (3) that the Schiavone Company is "closely aligned" with the Genovese family through Mr. Magrini and Mr. Masselli, (4) that the Schiavone Company was the "subject" of investigation in TUMCON, and (5) that Donovan is acquainted with LCN members through Magrini and Masselli "on [a] business and social basis".[166] There were other allegations.[167]

On January 10, 1981, according to Adamski, the New York FBI office called FBI Headquarters about this information.[168] Adamski learned of the information but did not call Fielding. Not yet.[169]

---

[159] *Id.*

[160] The FBI memorandum said that the Schiavone Company "paid the Kantor Supply Company approximately $13,000 to dump uncleaned excavation *on property owned by Kantor.*" The property was not owned by Kantor; it was owned by the City of Newark. See note 30, *supra*, and accompanying text.

[161] The FBI memorandum failed to say that Kantor's sworn deathbed confession was that his company issued phony invoices including one to the Schiavone Company and that Donovan authorized the $13,000 payment that the Schiavone Company made to Kantor. See notes 25–29, *supra*, and accompanying text.

[162] Cass Peterson, "Easy Approval of Labor Aide Hits a Snag," Washington Post, January 8, 1981, A3; Lance Gay, "Senate Panel Postpones Hearing on Donovan Until Next Week," Washington Star, January 8, 1981, A3; Robert Cohen, "Donovan Hearings Put Off," New Jersey Star Ledger, January 8, 1981; and Philip Shabecoff, "Hearing on Donovan Postponed," N.Y. Times, January 8, 1981 at B16.

[163] Assistant Attorney General McConnell letter to Chairman Hatch, dated September 17, 1982, at 3; Ex. 13, App. 113.

[164] App. 218.

[165] Assistant Attorney General McConnell letter to Chairman Hatch, dated September 17, 1982, at 3.

[166] Ex. 13, App. 113. In addition to the Masselli tape reference to a social function, an FBI source alleged that Donovan attended the 1979 Super Bowl in Miami "with Masselli and other LCN figures in the construction business." Ex. 13, App. 113. For a discussion of the investigation of the "Superbowl" allegation, see note 202, *infra*, and accompanying text.

[167] It was also alleged by one informant that Donovan was an "alcoholic and heavy gambler making bets in the $5,000 to $6,000 range," begging the question, if it were true, whether such gambling was legal. Ex. 13, App. 113. For a discussion of how this was reported to the transition team, see notes 171, 180, *infra*.

[168] App. 593.

[169] App. 596.

On January 10, 1981 the New York FBI office authored a multi-page teletype, at least 4 pages in length, that included the Masselli information and a transcript of the Masselli tape reference to Mr. Donovan.[170] The teletype, concerned only with Donovan and the Schiavone Construction Company, contained other information but the FBI has not publicly disclosed to this day what it is.[171] The January 10 teletype, according to Adamski, was received on January 11, Sunday, and Adamski saw it the first thing that morning.[172]

Adamski "was concerned", he testified, "because this is not the type of information that normally develops in the background of a cabinet nominee".[173] Adamski said that the information, based on reliable sources, was "pertinent', "certainly important", and represented "a significant turn in the [Donovan] investigation".[174] Adamski, however, did not talk to Fielding on Saturday when he first learned of it, nor Sunday morning when he first saw the teletype; he spoke tc Mr. Fielding Sunday afternoon at 2:45 p.m., the day before Donovan's scheduled confirmation hearing.[175] There is some disagrement as to what Adamski and Fielding discussed.[176] It is clear, however, that Fielding said he "did not want Mr. Donovan interviewed".[177]

10. The New York investigation triggered by the informant's call also uncovered an allegation that Mr. Donovan had organized crime ties to Big J trucking ("The Big J Allegations")

The Masselli tape information would not be all that the FBI would learn but fail to tell the Committee.

On January 11, 1981, the New York FBI office sent a second teletype to FBI Headquarters about "Raymond J. Donovan", to the "Immediate" attention of FBI Director Webster, deadline "past". It arrived at 4:42 p.m. in Washington, D.C. Executive Director Mullen apparently read it; his initials appears to be on the telex's right hand corner. Adamski saw the telex but he does not recall when.[178]

The telex stated that the day before another FBI source who "provided *reliable* information in the past" made four allegations involving Mr. Donovan and his firm:

(1) That Mr. Donovan had "definite ties to LCN figures in a liaison capacity". He said that "in situations in which bids are being submitted and contracts awarded to Schiavone, [Donovan] represents Schiavone in negotiations with representatives of various trade unions". The source said that "in these dealings appointee made his [organized crime] *connections* (emphasis supplied)".

COMMENT.—This information could have been pertinent because, according to Donovan's testimony, he was "deeply" involved in labor negotiations.[179]

---

[170] App. 597, 624.

[171] App. 178. The Committee has one excerpt of the January 10, 1981 teletype, that the FBI informant was "presently acquainted" with Donovan who "often" bet 5 to 6 thousand dollars at once, only because that portion is mentioned later in the affidavit of Anthony Adamski, Jr., dated June 14, 1982 at 3, submitted in an internal FBI investigation [hereinafter referred to as "Adamski Aff. —"].

[172] App. 618.

[173] App. 645.

[174] App. 594, 617, 621, 653.

[175] Ex. 13, App. 113.

[176] For a discussion of what Messrs. Adamski and Fielding each say was said, see notes 272–83, *infra* and accompanying text.

[177] Ex. 13, App. 113.

[178] Assistant Attorney General McConnell letter to Chairman Hatch, dated December 3, 1982 (enclosure). There was also a meeting with FBI officials including Mr. Adamski on March 15, 1983 to discuss the FBI's failure to produce this teletype until December 3, 1982 [hereinafter referred to as "Adamski meeting"]. For further discussion of the FBI explanation regarding this teletype, see notes 348–60, *infra*, and accompanying text.

[179] See notes 4–4, *supra*, and the accompanying text.

(2) That "the relationship between Schiavone Construction and Big J Demolition [should] be explored in that [sic] in order to do business with Big J Demolition", according to the source, "one had to have LCN connections". The reader of this teletype is here referred to the earlier teletype that Adamski read that morning for more information on Big J.

COMMENT.—This information could have been pertinent because, according to the FBI, Ed Garofola, the owner of Big J, has an arrest record and FBI number as do other Big J personnel; some of the Big J personnel also have alleged organized crime associations.[180] There is a relationship between Big J Trucking and Schiavone Company; the Schiavone Company rented equipment from Big J for its joint venture with Impresit and others on the 63rd Street subway project for $125,196.39.[181]

(3) That Schiavone Construction Company had "serious financial problems recently" and although the informant had "no personal knowledge of this financial difficulty", stated that Schiavone "overextended itself by approximately $23 Million dollars and was forced to take a loan from Fiat Motors in Italy".

COMMENT.—This information could have been pertinent because the Schiavone Company venture on the 63rd Street subway project, just mentioned, was a joint venture with Impresit, a Fiat subsidiary.[182]

(4) That Donovan "is rumored to have established [a] 'dummy corporation' dealing with home improvements for [the] purpose of laundering money". The informant said he "has no direct personal knowledge of this alleged dummy corporation nor does [the informant] know source of or for whom money [was] being laundered".

COMMENT.—This last allegation that Donovan may have laundered money would constitute criminal misconduct. There is no record, however, that the FBI informed Mr. Fielding of this allegation or any of the "Big J information".[183]

11. On January 12, Mr. Donovan appears for his confirmation hearing; Chairman Hatch schedules a vote of the Committee for January 15

As of January 12, neither the FBI nor anyone else told the Committee about the HOFEX references to Schiavone, the Masselli investigation including the tape reference, or the Big J allegations.

On January 12, Mr. Donovan appeared before the Committee. Immediately upon calling the Committee to order, the Chairman announced, "The purpose of today's hearing is to consider the nomination of Raymond J. Donovan of New Jersey, to be the Secretary of Labor."[184] The Chairman however noted, "we are aware of certain troublesome aspects to this nomination", referring to the Kantor and

[180] During the "Adamski Meeting", Chief Supervisor Paul Nolan of the FBI's Office of Professional Responsibility ("OPR"), reading from the January 10 teletype, so advised the Committee's Special Counsel and Minority Investigator, as well as the Ranking Minority Member's Administrative Assistant.

[181] The Special Prosecutor estimated the Schiavone Company's business with Big J Trucking. Spec. Pros. Supp. Rpt. 3. For a discussion of Schiavone Company's joint ventures, see notes 2 and 36, *supra*, and accompanying text.

[182] See note 36, *supra*; for further discussion of a related allegation see notes 257–58, *infra*.

[183] Neither Messrs. Mullen or Adamski were asked about this teletype because it was not produced to the Committee until December 3, 1982, months after the sworn testimony of Messrs. Mullen and Adamski "concluded." For further discussion, see notes 348–60, *infra*, and the accompanying text.

[184] D. Tr. 1.

Gross matters.[185] Neither the Chairman nor any member of the Committee however knew of other "troublesome aspects". Nor was the Chairman or any Committee member aware of any of these matters when Mr. Donovan concluded his testimony that day with the Chairman's statement thanking Mr. Donovan for his "patience and forbearance". Having said "the hearing is closed", the Chairman said, "We will receive [written] questions until 6 o'clock and any information *which is vital* within 48 hours (emphasis supplied)".[186] Neither the FBI nor the transition team availed themselves of this opportunity.

12. Mr. Mullen also knew of the Masselli tape reference but he did not tell the Committee before January 15

Mr. Adamski wrote a memo to Mr. Mullen, dated the same day as the Donovan hearing. It discussed the Masselli tape reference and related information; it characterized the Masselli tape reference as "pertinent". It said nothing however about the Big J allegations.[187] Mr. Mullen agreed with Mr. Adamski's assessment that the information in that memo was 'important", "could be characterized as serious", and was "pertinent" to the Donovan investigation but he took no steps to advise the Committee before its vote scheduled for January 15.[188]

13. Mr. Fielding knew of the Masselli investigation and organized crime allegations but he did not tell the Committee before January 15th

Mr. Adamski approved a cover letter and memo for Mr. Fielding that said: (1) that there was another "ongoing" investigation "of Schiavone" that was "not anticipated to be completed in the near future" (but did not specifically identify it as the Masselli investigation), (2) that Donovan allegedly had "*close* personal and business ties with known La Cosa Nostra (LCN) figures" and that this information was "*corroborated* by independent interviews of confidential sources" (but did not say with whom he allegedly associated or for what specific purpose(s)), (3) that "the degree of Mr. Donovan's association *with* knowledge of the LCN figures has not been determined" (but that is not surprising since Mr. Adamski did not interview Mr. Donovan—as per Mr. Fielding's statement the day before) and (4) concluded that "none of the information available indicates any criminal wrongdoing" (emphasis supplied).[189] There was no mention of the Big J allegations. Whether or not Mr. Fielding and the transition team got all the details, they weren't volunteering what they knew to the Committee.

---

[185] D. Tr. 2.
[186] D. Tr. 181.
[187] Ex. 13, App. 113.
[188] App. 202, 205.
[189] Ex. 19, App. 207. The memo excluded any mention of the gambling allegation. The rough draft of the memo submitted to Mr. Adamski for his review and revision, if any, repeated the allegation that Mr. Donovan was a "heavy *gambler* and possibly an alcoholic" as well as the range of the alleged bets. After Adamski reviewed the draft, it read "heavy *drinker* and alcoholic", without any reference to gambling. Adamski swore in an affidavit that this was a clerical error. Adamski stated that he had deleted the amount of the alleged bets because, he said, "it could possibly identify the source of information". Although the original teletype said that the informant was "presently acquainted with Donovan." Mr. Fielding's memo, as revised, said "there has been no close association between the source and Mr. Donovan in the past year"; Adamski said that he made this change because of information he got from New York although he conceded it "is not documented in any way." See Adamski Aff. 3–4 and notes 167 and 171, *supra*.

14. As a result of press accounts about Mr. Donovan's confirmation hearing, an informant named Picardo comes forward and the Committee vote on confirmation is delayed past January 15th

On January 13, the *Washington Post*, *Washington Star*, *N.Y. Times* and other papers reported that the Donovan hearing concluded and the Labor Committee planned to vote on Mr. Donovan's nomination later that week; the *N.Y. Times* ran a picture of Mr. Donovan.[190] Ralph Picardo, a protected government witness, who had testified in several federal criminal prosecutions,[191] saw that picture.

Mr. Picardo told FBI agent John Hersh that he recognized Mr. Donovan as "Ray", a Schiavone Executive, from whom he repeatedly received payoffs for "labor peace" in the late 60s. Mr. Picardo said that he gave "Ray" false truck rental billings to cover the illegal payments.[192] Agent Hersh forwarded the Picardo allegations to Adamski.

From that moment forward, Adamski "more frequently" discussed the Donovan investigation with Mr. Mullen.[193] Mullen ordinarily would have "limited involvement" in a background investigation; he said it would be an understatement to say that he spent "more time on it [Donovan's background investigation] than any other case".[194]

Adamski dictated a brief paragraph describing Mr. Picardo's allegations against Mr. Donovan.[195] Mr. Mullen signed the cover letter of January 14 to Chairman Hatch informing him that "additional information [regarding Mr. Donovan] has been developed" and Mr. Adamski's memo about Mr. Picardo was enclosed, he said, "in view of your prior request [of December 31, 1980]". The letter also said, "If additional information is developed, you will be advised."[196]

The FBI concededly had not investigated Mr. Donovan's alleged payoffs to Mr. Picardo, more than ten years old; they nevertheless reported them *immediately* and *directly* to the Committee. They still did not, however, report the more recent allegations about Masselli, Big J or the HOFEX references to Schiavone Company. The Picardo allegations, however, did stop the Committee's scheduled vote.

15. Chairman Hatch and the Ranking Minority Member met with the Director, the Committee staff interviewed Mr. Picardo, and an appearance before the Committee is scheduled for Mr. Donovan, as well as the FBI

Chairman Hatch publicly acknowledged that the Committee received new allegations involving Mr. Donovan and that "There are a couple of things that bother us that we have to check out now." He said, that it would be done "in a bi-partisan way".[197]

---

[190] Warren Brown, "Donovan Firm Bought Peace With Teamsters", Washington Post, January 3, 1981, at 1; Lance Gay, "Labor Panel Chairman Satisfied on Donovan", Washington Star, January 13, 1981, at A3; Philip Shabecoff, "Senators Question Donovan on Jersey Racketeering", N.Y. Times, January 13, 1981, at 1.

[191] Mr. Picardo testified for the FBI in four federal criminal trials from about 1978 to about November 1980 and his testimony led to the convictions of Anthony Provenzano, Gabriel Briguglio, Stephen Andretta and Thomas Andretta, and others. See Executive Assistant Director Mullen letter to Chairman Orrin Hatch, dated January 28, 1981. Dr. Tr. 255, 287–289. Mr. Picardo was also a key informant in the HOFEX investigation involving Messrs. Provenzano, Briguglio, and Andretta, discussed above in note 137, *infra*, and the accompanying text.

[192] Ex. 17, App. 186 *et seq*; Ex. 18, App. 194 *et seq*.

[193] App. 495.

[194] App. 495–96.

[195] App. 686.

[196] Ex. 18, App. 194 *et seq*.

[197] Lance Gay, "New Delay in Donovan Hill Hearing", Washington Star, January 15, 1981, at A4.

On January 15, the Committee staff interviewed Picardo in Adamski's presence.[198] Chairman Hatch and Senator Kennedy met with Director Webster for an hour that day. Senator Hatch afterwards said that he asked Director Webster "to clean up some of the muddy language of their [FBI] reports".[199] If the allegations are "important", the Chairman said, he would reconvene an additional hearing to air them.[200] He did. He scheduled a hearing for January 27, 1981. Messrs. Mullen and Adamski were scheduled to appear, as was Mr. Donovan.

16. Through January 22, 1981 the FBI investigated the Picardo allegations but not much else

Through January 22, 1981, the FBI conducted its investigation, principally about the Picardo allegations. The Schiavone Company was the subject of the ongoing Masselli investigation—and still is today, according to the FBI.[201] As of January 22, 1981, Adamski however claimed:

(1) the FBI had still not disproved—not then nor since—that Donovan attended the social function mentioned on the Masselli tape with Masselli, Magrini, and DeFilippis,[202]

(2) the FBI had not talked to Masselli and had not disproved that he was a soldier in the Genovese Crime family,

(3) the FBI had not disproved that Magrini had associations with the Genovese Crime family,

(4) the FBI did not interview Mr. DeFilippis and Mr. Adamski said he did not know if he knew then that Mr. DeFilippis was a subject of the Masselli investigation, and

(5) the FBI had not even interviewed Donovan to see what, if anything, he knew—Adamski thought it would not have been "reasonably productive".[203] The FBI apparently had not done very much with the Masselli allegations even though Adamski earlier informed Fielding by memo, dated January 12, 1981 that the information had been "corroborated".[204]

There is *no* evidence of *any* FBI investigation of the Big J allegations.

---

[198] Ex. 17, App. 189 *et seq.*

[199] Philip Shabecoff, "Senators Put Off Vote on Donovan as Panel Gets Word of Allegations", N.Y. Times, January 16, 1981, at A3.

[200] Lance Gay, "Full Probe is Sought Into Donovan Charge", Washington Star, January 16, 1981, at A3.

[201] Assistant Attorney General McConnell letter to Chairman Hatch, dated March 3, 1983.

[202] As previously noted, see note 166, *supra*, this is not the only social function that Mr. Donovan is alleged to have attended with Masselli; at least one source said that Mr. Donovan attended the 1979 Superbowl in Miami, Florida "with Masselli and other LCN figures." On January 11 and 12, 1981 the FBI investigated this trip. According to a teletype excerpt dated January 12, the FBI reported that "appointee [Donovan] was *not* observed * * * *all* subjects observed in surveillance conducted in Miami in January 1979 were known associates of Masselli" and "surveillance photos taken *in Miami* during January 1979 were examined and appointee was not observed in any of them (emphasis supplied)." On March 3, 1983, the FBI conceded to the Committee that "none of the [surveilling] agents" knew what Donovan looked like, their opinion was based on looking at a picture of Mr. Donovan two years after the surveillance, and finally that Masselli was not always under surveillance—only "at times when he [Masselli] appeared in public areas, and surveillance was both practicable and useful." Mr. Donovan's lawyer told the Special Prosecutor that Mr. Donovan's airline tickets showed that Mr. and Mrs. Donovan flew to Florida in January 1979. The FBI said that they interviewed hotel employees and guest registration records in Florida and they found no reference to Mr. Donovan. But Mr. Donovan's attorney later told the Special Prosecutor that Mr. Donovan did not stay at a hotel; he stayed at his home near Ft. Lauderdale, Florida. On March 3, 1983, the FBI also conceded that they had conducted "no interviews" of Mr. Donovan's Florida neighbors. See Assistant Attorney General McConnell's letters to Senator Hatch dated December 8, 1982 at p. 3 and March 3, 1983 at p. 4; Ex. 40, App. 601–603.

[203] App. 609–11, 731–32.

[204] App. 208.

17. The FBI Report, prepared Statement and Testimony Before the Committee

By January 22, 1981, the FBI had prepared a draft report of its investigation's results for the Committee. On that day, Messrs. Mullen and Adamski reviewed the draft report. Mullen could not give the Committee a copy of the draft; he said he did not keep a copy.[205] The Committee does not know therefore what, if anything, may have first been included in "draft" and deleted in "final". After consulting with Adamski, Adamski's staff and others, Mullen testified that he "consciously" made "the ultimate decision" not to tell the Committee about the Masselli tapes including the "pertinent" reference to Donovan.[206] Having decided to withhold the one tape reference to Donovan that he had known about for ten days, Mr. Mullen was of the opinion that "in light of the large number of wiretaps" in New Jersey, "something might have turned up on Mr. Donovan" in New Jersey.[207] In the presence of Mr. Mullen and Mr. Adamski, a subordinate requested that the New Jersey FBI office search its ELSUR indices for any other wiretap reference to Donovan or Schiavone. Neither Mr. Mullen nor anyone else requested a search of the comprehensive ELSUR indices in FBI's Washington Headquarters just floors away; those indices included the "pertinent" Masselli tape reference. New Jersey reported that there were no wiretap references.[208]

As for the Big J information, the Committee does not know what discussion, if any, there was about withholding that information.

The FBI tendered its Report, dated January 23, 1981, ("the Report") directly to the Committee. It was noted on the Director's cover letter to the Chairman that the Report was "prepared to furnish results of [the] additional [FBI] investigation conducted regarding Mr. Donovan and the Schiavone Construction Company".[209]

Mullen reviewed with Adamski and others the prepared statement ("the Statement") that he would make when he appeared before the Committee. He decided to mention the wiretap search in New Jersey that disclosed nothing and to withhold the earlier search in New York that uncovered Mr. Masselli's tape reference to Mr. Donovan.[210]

In its Report, the FBI gave some but withheld other information. It withheld the Masselli tape reference to Donovan and the Big J information.[211] The FBI did not even mention the name Big J Demolition much less the dummy corporation that Mr. Donovan allegedly established to "wash" money. The Report acknowledged that Schiavone was a "subject" of investigation.[212] Mullen subsequently agreed however that there was "nothing in there [in the January 23rd report] that would indicate to anybody [reading the report as opposed to listening to his prepared statement] that the information about Jopel and Masselli in the report had anything to do with the [Masselli]

---

[205] App. 241.
[206] App. 309–310, 312.
[207] Assistant Attorney General McConnell's letter to Chairman Hatch, dated March 3, 1982, at 3.
[208] *Id*; for further discussion of ELSUR, see notes 78–83, *supra*, and accompanying text.
[209] Ex. 20, App. 220 *et seq*.
[210] D. Tr. 256.
[211] Mr. Mullen admitted much later that "all of the [Masselli] information contained in the internal memorandum [from Mr. Adamski] *was not* furnished". Chairman Hatch carefully compared the information the FBI had with the Report it gave to the Committee. App. 256–259.
[212] Ex. 20, App. 222.

grand jury investigation [mentioned separately in Mullen's prepared statement] of a fraudulent minority business enterprise".[213]

"Pertinent" was the word that Adamski selected to describe the Masselli wiretap reference to Mullen [214] and that information was not in the Report. In his Statement, Mullen nevertheless said that "no information of *pertinence* that *is not in ouur report* was developed" [215] about Mr. Donovan or Schiavone. In the very next sentence of the Statement, Mullen said that there was "no reference" to Donovan or Schiavone in any wiretap *in New Jersey*.[216]

Shortly after that, Mr. Mullen invited questions from the Committee. The Chairman asked Mullen to tell the Committee of the FBI's investigative effort and what Mullen meant by "informants". About the informants, Mullen said that they were individuals who knew about organized crime in the construction industry "in the *New York*-New Jersey *area* (emphasis supplied)." [217]

Mr. Mullen agreed without geographical limitation that since 1969 the FBI had conducted "an extensive number of court-ordered Title III electronic surveillances involving organized crime or labor-related matters". Chairman Hatch asked, "So there have been an extensive number of wiretaps?" Mullen said, "That is correct." Chairman Hatch asked, "Concerning organized crime *in this area*", referring to the "*New York*-New Jersey area (emphasis supplied)". Mullen said, "That is correct."

The Chairman then asked,

> Your unit has investigated *every one* of these wiretaps and the information and data on them, and is it correct to say you have found *absolutely nothing* pertaining to Schiavone Construction Company?

Despite the Masselli tape reference to Donovan and the Schiavone Construction Company, Mullen answered,

> That is correct Senator. In each case when we do have a court authorized wiretap we must record the identity of every individual or company referred to. We maintained those records known as overhears, and we located *no reference to Mr. Donovan or Schiavone Construction Company.*

The Chairman again asked,

> Neither Mr. Donovan or Schiavone has been mentioned in *any* of these investigations?

No difference. Mullen again answered,

> That is correct.[218]

Chairman Hatch asked Mr. Mullen a series of questions that should have caused Mr. Mullen to acknowledge: (1) the existence of the "pertinent" Masselli tape reference to Mr. Donovan and (2) the FBI's con-

---

[213] App. 281–82. In Mullen's prepared statement, the confusion was further aggravated because Mr. Mullen did not explain the sharp distinction between a "subject" of investigation and a "target" of investigation. The Schiavone Company *was* an investigative "subject", that is, "within the scope of the grand jury's investigation" in the "Masselli" investigation of a fraudulent MBE. The Schiavone Company was, however, not a "target", that is, "a person as to whom the prosecutor or the grand jury has substantial evidence linking him to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant." *See* U.S. Attorney's Manual § 9–11.250. Mullen's Statement said without further explanation only that Schiavone was not a "target". D. Tr. 254.

[214] See notes 187–188, *supra*, and and accompanying text.

[215] D. Tr. 255

[216] D. Tr. 256.

[217] *Id.*

[218] D. Tr. 257.

clusion that it had "corroborated" Donovan's associations with organized crime. Mullen did not. The exchange of questions and responses follow:

The Chairman asked,

In your opinion, as investigators, do you feel that had there been these types of associations by Mr. Donovan and/or his firm with known [organized crime] influences, you would have picked them up somewhere in this extensive investigation?

Mullen answered,

I think *something* would have come to our attention.

The Chairman asked,

And you are saying nothing did?

Mullen answered,

Nothing has.

Senator Quayle had no better luck with Mr. Mullen.

Senator Quayle asked,

In this investigation, nothing has come to your attention to substantiate any of these character assassinations and statements about the mob connecion with Mr. Donovan?

Mr. Mullen answered,

Mr. Donovan or Schiavone Company.

Senator Quayle asked,

Nothing?

Mr. Mullen answered,

That is right.[219]

The Chairman gave Mr. Mullen another opportunity later when he asked, "It has been alleged that Mr. Donovan, through his position in Schiavone Construction Company, was associated with organized crime figures. You have not found *any* evidence in that regard through your investigation (emphasis supplied)?" Mr. Mullen answered, "We have not."[220]

Senator Kennedy fared no better with Mr. Adamski when he asked him, "Is it fair to say that you can neither *corroborate* nor disprove these allegations (emphasis supplied)?" Mr. Adamski said, "That is correct", although Adamski is the one who wrote Mr. Fielding that the information was "corroborated".[221]

The Committee could have unraveled the confusion between the FBI report and Mr. Mullen's statement if the FBI plainly told the Committee that the following three facts dispersed through the Report and Statement were connected: (1) the allegation of a grand jury investigation (par. 1 of the Report) had to do with (2) the allegation of an investigation of a fraudulent MBE (par. 2 of the Statement), and (3) Jopel was the MBE established by a self-admitted mobster, Masselli, who was closely aligned with Mr. Donovan's firm (par. 2 of the Report). The Chairman tried to unravel it; Mullen misled him.

---

[219] D. Tr. 275.
[220] D. Tr. 303.
[221] D. Tr. 265; see note 189, *supra*, and accompanying text.

Chairman Hatch referred to the sentence in the FBI report that referred to the Masselli investigation [222] and asked, "What is that referring to?" Mr. Mullen first said, "That is an ongoing investigation in our New York office of several companies", leading to the following exchange:

The Chairman asked,

Basically as they pertain to Harry Gross?

Mullen answered,

That is correct.

The Chairman asked,

Harry Gross the Teamster Union official that we heard about in our first hearing?

Mullen answered,

Yes sir. [223]

Mullen made no effort to correct the false impression given to the Committee. Nor did Adamski correct it later when Senator Hatch asked, "The first allegation [regarding Masselli unbeknownst to the Chairman] was, and I think we have already gone over this, was the one we discussed earlier concerning Harry Gross." Mr. Adamski said, "That is correct." [224]

Senator Riegle however inquired specifically about the FBI's investigation of Masselli's Company, Jopel, "May I ask with respect to the Jopel Construction Co., this allegation made here, has the Bureau made a contact to that company?" Mullen said, "No, sir." [225] Senator Riegle asked, "do you have any knowledge, or have you tried to establish whether that company has any direct operating contact, or *any significant contact* of any kind with the Schiavone Co.?" Mr. Adamski said "Senator in the construction business there has been *some contact*, but nothing that I would consider to be significant, both being in the construction industry." [226] Adamski did not correct the impression he

---

[222] The first paragraph of the Report is as vaguely written as earlier reports, even after the Chairman complained to Director Webster about them being "muddy". See note 199, *supra*, and accompanying text. The first paragraph of the Report contains two allegations and is repeated in full below with brackets and indentations accurately marking the beginning of the Report's reference to the first allegation (the Masselli investigation) and the second allegation (the Gross investigation):

"The FBI instituted an investigation of Raymond J. Donovan with a check of the central records of the FBI, and the files of the Identification Division by name only, and no pertinent information was developed concerning him. A check of indices in the FBI field office in Newark, New Jersey, disclosed no pertinent information on Donovan and no pertinent information was developed.

[1st Allegation: *the Masselli Investigation*] The check did disclose that the Schiavone Construction Company (SCC), Secaucus, New Jersey, which is partially owned by Mr. Donovan, is involved in a current FBI investigation under the Federal Racketeer Influenced and Corrupt Organization (RICO) Statute wherein records of SCC were subpoenaed by a Federal Grand Jury, but Mr. Donovan was not subpoenaed.

[2nd Allegation: *The Gross Investigation*] SCC is *also* listed among numerous others as the subject of an investigation under the Labor Management Relations Act of 1947 and RICO Statute. This investigation is based upon *allegations that a union president* has misused the pension and welfare fund and received extensive kickbacks for approving loans and awarding "sweetheart" contracts. To date, there is no information to indicate any involvement of Mr. Donovan in this matter. This information [about the Gross investigation] was forwarded in a communication to the Conflict of Interest Counsel of the President-elect on January 5, 1981 (emphasis supplied)". App. 222.

As earlier noted, the description of the Gross investigation differs from the description rendered on January 5, 1981. For that discussion, see notes 151–57, *supra*, and accompanying text.

[223] D. Tr. 262.

[224] D. Tr. 283.

[225] D. Tr. 269.

[226] *Id.*

left although the "contact" was a little more formal than just "being" in the same industry; Jopel had had several subcontracts with Schiavone. Asked what the FBI found, Mullen testified, "Very limited contact, [with Jopel], especially wherein the nominee was involved." Senator Riegle asked, "Where the nominee was involved?" Mr. Mullen testified, "That is right." [227] Senator Riegle asked if they had therefore interviewed Mr. Donovan. Mullen said that they had not.[228] Riegle asked, "So you have not talked to Mr. Donovan, *per se*, about what relationship, as either an officer of Schiavone, or just personally, he might have had at that point with this particular company, is that right?" Mr. Mullen said, "'No, we have not delved into that kind of relationship." [229]

Senator Riegle therefore asked what the FBI knew of Jopel's owner, Masselli. Riegle asked, "Now, is Mr. Masselli a person against whom charges have been made, or is this a person who at any previous time has been the subject of conviction or what would be his—." Mr. Mullen said, "I do not have *any background whatsoever* on him (emphasis supplied)." Senator Riegle asked, "He was not spoken to in the course of the investigation, I take it?" Mr. Mullen, "He was not." Senator Riegle asked, "It would seem to me that it might well be appropriate under the circumstances for the FBI to have spoken to Mr. Masselli directly, as long as he was the—." Mr. Mullen said, "It was our opinion, Senator, and we are the investigators in the case, that we had adequate information available to us in the form of records and source contacts to cover this particular allegation. We just could not verify it, especially where it deals with Mr. Donovan." [230] So the record remained confused on this point.

Without any knowledge of the January 10th allegation that Donovan had established a dummy corporation, Senator Eagleton asked a relevant question about the scope of the FBI investigation. Senator Eagleton asked if the FBI had checked seven Schiavone Companies, some with and some without the Schiavone name; Adamski conceded the FBI had not.[231]

The Chairman asked Mr. Mullen whether this could have been a more thorough investigation. Mr. Mullen said, "I do not know what else we could have done." [232]

The Chairman asked Adamski about his earlier remarks that "if this [Donovan investigation] had been a criminal investigation [the FBI] would have abandoned it a long time ago?" The Chairman asked, "Why would you make that statement?" Mr. Adamski said, "There is no place else to go, no place logical to go at this point in time. You have to have a specific allegation, a specific direction. We do not have that." The Chairman asked, "You are saying that all leads that you had and allegations that have been made by informants have not proven to be correct or true or verified?" Adamski answered, "We have not been able to *corroborate* the informant information or allegations (emphasis supplied)." [233] Again that word, "corroborate".

---

[227] *Id.*
[228] D. Tr. 269–270.
[229] D. Tr. 270.
[230] *Id.*
[231] The seven companies named were Schiavone Building, Schiavone Steel, Colonial Leasing, Livingston Dodge, Lamington River, Reynwood Corp., and Fiddler's Elbow Country Club. D. Tr. 293
[232] D. Tr. 266.
[233] D. Tr. 260.

Mr. Mullen twice told the Chairman that the investigation was "favorable" to Mr. Donovan.[234] Chairman Hatch concluded the testimony of Messrs. Mullen and Adamski, before recessing by stating "We would like to keep the FBI here if we can." [235]

After the recess, Mr. Donovan again appeared before the Committee. Mr. Adamski remained to hear Mr. Donovan testify.[236] Mr. Donovan testified that he did not know and had never known Masselli "on a close or social basis". The Chairman first asked Mr. Donovan how many "contacts" had he had with Mr. Masselli. Donovan answered, "I have searched my mind on that. It can't be more than three times that I have ever seen Masselli in my life. They were *in passing, on the job site.* The man is our subcontractor. So I would say three times would be accurate (emphasis supplied)." The Chairman and Mr. Donovan then had the following exchange:

The Chairman asked,

Have they been on a close or social basis or more a contract business basis?

Mr. Donovan answered,

Totally on a contract business basis (emphasis supplied).

The Chairman asked,

You don't know him personally or socially at all other than you've met him in the contract work?

Mr. Donovan answered,

That's correct.[237]

Senator Riegle later questioned Mr. Donovan about Mr. Masselli and Schiavone's "contacts" with Jopel.

Mr. Donovan said,

Mr. Masselli is with Jopel Construction and Trucking Co. He came to work for our company as a result of a subcontractor named Narg[i], who was going bankrupt. Jopel came to Narg[i] and agreed, if we as general contractors would agree, to perform this contract, and we agreed on the assignment of that contract. That's how we met Jopel. He is as I testified, an MBE, minority business enterprise, so categorized and so carried on the records of the Metropolitan Transit [sic] Authority ["MTA"] of the city of New York, for whom we were working.

Senator Riegle asked,

Was that your only working contact with him?

Mr. Donovan answered,

Pardon me?

Senator Riegle asked,

Was that your only working contact with him?

Mr. Donovan answered,

No, he has worked on several of our projects.

Senator Riegle asked,

Has that been the nature of the relationship, as a contracting relationship?

Mr. Donovan answered,

That's correct, Senator.

Senator Riegle asked,

You would classify him as a personal friend of yours, or would you?

---

[234] D. Tr. 260, 277.
[235] D. Tr. 308.
[236] App. 543.
[237] D. Tr. 335–36.

Mr. Donovan answered,

> No, I wouldn't. I have *only* seen the man—my best guess was three times in my life, *on sites*, having to do with the contracting business alone.[238]

On January 29, Donovan's nomination was voted out of Committee for consideration on the floor of the U.S. Senate. Five Committee members present however abstained from voting by stating only that they were present. That same day, Mr. Mullen wrote the Chairman, "I stand by the results of this investigation which surfaced *no information* which would reflect *unfavorably* upon Mr. Donovan *in any manner* (emphasis supplied)."[239] On February 3, Senator Hatch read Mr. Mullen's letter into the record during the floor debate of Mr. Donovan's confirmation. The Chairman said that he could think of "no more fitting conclusion" to his remarks than to repeat Mullen's statement and he did.[240]

On February 3, the Senate confirmed Mr. Donovan by a vote of 80 "yeas" to 13 "nays".

C. After the nomination, the unraveling

1. In May 1981, Messrs. Masselli and Gross are indicted

In May 1981, Mr. Masselli was indicted for hijacking.[241] And six days later, Gross was indicted for extorting the Schiavone Company, among others.[242]

2. In June 1981, Time Magazine uncovers the Masselli tape reference; the Committee requests the reference and an explanation

On June 8, 1981, *Time Magazine* ran an article that stated the "court-sanctioned wiretaps of Masselli's operations in New York City did indeed record conversations *between* Masselli and *Donovan* (emphasis supplied)." The article was wrong; Donovan had not been overheard. Mullen however acknowledged to the reporter that there had been a wiretap. Mullen reportedly said that he did not "volunteer" this information because it would have compromised the Masselli investigation.[243]

In a letter dated June 25, 1981, Senators Hatch and Kennedy asked Director Webster, "Why didn't the Bureau inform the Committee in executive session of the additional information it possessed regarding a relationship between the nominee and Masselli?"[244]

Director Webster responded first by including an excerpt of the "pertinent" tape reference in one letter. Another request asked, "why the Bureau didn't inform the Committee"; the Director answered, "Mr. Mullen did not advise you that Secretary Donovan's and Mr. Schiavone's names were mentioned . . . because, as we previously stated, it was not considered *significant* or *surprising* (emphasis supplied)."[245] Mr. Adamski, who characterized the tape reference as "pertinent", believes he wrote this letter for the Director's signature.[246]

---

[238] D. Tr. 350.
[239] App. 437.
[240] Congressional Record, 97th Congress, 1st Session, S855, February 3, 1981.
[241] See notes 50–116, *supra*, and accompanying text.
[242] See notes 36–45, *supra*, and accompanying text.
[243] "Bad Company? More Doubts About Donovan", Time Magazine, June 8, 1981, at 27; *see also* notes 333–42, and accompanying text.
[244] Senators Hatch and Kennedy letter to Director Webster, dated June 25, 1981.
[245] Ex. 53, App. 876.
[246] App. 875.

3. July 1981, Mr. Mullen becomes the Acting Administrator for DEA

On July 13, 1981, the Senate was in session when Mr. Mullen was appointed "Acting" Administrator for the Drug Enforcement Administration ("DEA") and succeeded Mr. Peter Bensinger.[247] President Reagan did not submit Mr. Mullen's name to the Senate for confirmation the day Mr. Mullen became "Acting" Administrator nor did he submit it for months afterwards. Mr. Bensinger was the first and only Administrator DEA had since its creation in 1973 when President Nixon asked Congress to enact his Reorganization Plan to consolidate "our anti-drug forces under a single unified command."[248]

4. In December 1981, the Attorney General asks for a Special Prosecutor to investigate "any allegations concerning the truthfulness of Secretary Donovan's testimony"

In December 1981, the Attorney General asked that a Special prosecutor be appointed based on the allegations of Mario Montuoro, a government informant, that a Schiavone Company official made an illegal cash payment in 1977 to a union official in Mr. Donovan's presence. The allegations of Mr. Montuoro, even absent any "direct corroboration",[249] were legally sufficient to prompt Attorney General William French Smith on December 23, 1981 to request the appointment of a Special Prosecutor "as expeditiously as possible" to investigate this matter.[250] The Attorney General asked for a charter to investigate "any allegations concerning the truthfulness of Secretary Donovan's testimony at his confirmation hearings on matters relating to the informant's allegations".[251] Attorney General Smith said that the Department of Justice had "several active investigations" of the Schiavone Company and the Department intended to retain jurisdiction over those.[252]

On December 29, 1981 the court ordered the appointment of Leon Silverman, Esq. of New York City and empowered him as the Attorney General had requested. The Special Prosecutor began his investigation.

5. By December 1981, Mr. Mullen had been "acting" for about five months

As of December 29, 1981, Mr. Mullen had been "Acting" as DEA's Administrator for more than 5 months without being nominated. His nomination was not submitted to the U.S. Senate until March 29, 1982—after Mr. Mullen had been acting for eight months.[253]

---

[247] App. 326–27. Mr. Mullen told this Committee that he began "acting" on July 13, following the resignation of Mr. Bensinger (reportedly requested by President Reagan and effective July 10, 1981). *See also* Robert Pear, "Plan to Merge FBI and Drug Agency Passed", N.Y. Times, July 12, 1981 at 1. Mr. Mullen's nomination statement to the Judiciary Committee, submitted in 1982 and an Associated Press story that ran in the N.Y. Times state that Mr. Mullen began "acting" on June 19, before the effective date of Mr. Bensinger's resignation on a day when the Senate was in session. "Acting Drug Unit Head Named", N.Y. Times, June 20, 1981 at A10.

[248] See generally 5 U.S.C. Appendix: Reorganization Plan No. 2 of 1973, "Law Enforcement in Illicit Drug Activities" at 839 *et seq* [hereinafter referred to as "Reorganization Plan —"].

[249] Spec. Pros. Rpt., App. A at 2; Section 186 of the Taft Hartley Act, 28 U.S.C. § 186, prohibits any knowing transfer of money from a statutory employer to the representative of a labor union.

[250] *Id.* at 1.

[251] *Id.* at 3.

[252] *Id.* at 3–4.

[253] See President Reagan's nomination of Francis Mullen to be Administrator of DEA, dated March 29, 1982. With the 98th Congress, the President re-submitted Mr. Mullen's name on January 25, 1983.

6. Senators Hatch and Kennedy request specific portions of the Masselli tapes; the Department "respectfully declines"

In March 1982, Senators Hatch and Kennedy told the Director that after 15 months they still had "unanswered questions" about the relationship the Schiavone Company and its officials including Mr. Donovan had with William Masselli and Jopel and therefore asked for specific "portions" of the Masselli tapes that they believed would explain the extent and nature of the relationship.[254] The Special Prosecutor, by then familiar with the material, had no objection to disclosing the information.[255] The Department, however, "respectively decline[d] to provide the material".[256]

7. In March and April, the FBI discloses six incidents that it had not previously disclosed to the Committee but not the HOFEX references to the Schiavone Company nor the Big J allegations against Mr. Donovan

In March and April, the FBI told the Committee of six instances in which the FBI had information that it failed to give to the Committee.[257] The FBI canvassed all of its 59 field offices and told the Committee what it found. The FBI said nothing, however, about the information it had at headquarters that it had not produced, namely, the HOFEX references to the Schiavone Company or the Big J allegations involving Mr. Donovan.[258]

8. In May, the FBI Director disclosed the FBI's own investigation of its handling of the Donovan investigation

In May 1982, the FBI Director told the Committee that the FBI was investigating its handling of the Donovan background investigation.[259] The Director described the FBI's internal investigation.[260] There was, however, no investigation of the withheld HOFEX refer-

---

[254] The Senators requested those portions of the Masselli tapes that referred to: (1) the Secretary and other Schiavone officers (even by nicknames); (2) arrangements or dealings "between Masselli or Jopel" and the Schiavone Company "or its officers", (3) Nargi's business with the Schiavone Company, and (4) the forceful takeover of Nargi's business. *See* Senators Hatch and Kennedy letter to Director Webster, dated March 19, 1982.

[255] Special Prosecutor Leon Silverman letter to Director Webster, dated March 10, 1982.

[256] The Department stated that the material "could" compromise the informant and "contains allegations of improper conduct, uncorroborated by investigation, concerning government officials". *See* Assistant Attorney General Robert McConnell's letter to Senators Hatch and Kennedy, dated May 3, 1982.

[257] *The first.* From March 17–18, 1982, the FBI Office of Professional Responsibility ("OPR") conducted an investigation to determine why information in internal FBI reports originating in Newark ("the Newark memoranda") never reached the Committee. FBI Letterhead Memorandum, dated March 18, 1982.

The other five. The Special Prosecutor, the FBI Director and members of their staffs met on March 19 to discuss the retrieval of the Newark information and by close of business that day, all field offices were "notified of additional [unspecified] steps to be taken". Every field office responded by teletype by March 24, 1982. The teletypes revealed five incidents not "disseminated previously": (1) a New York informant said on January 11, 1981, that Donovan had business contacts with a number of individuals of "questionable reputation" and named them, (2) Roy Anderson of New York told the FBI in April 1981 that he had been employed by an Italian Company, presumably the Fiat subsidiary involved in a joint venture with Schiavone Construction, and charged that the Schiavone Company had been involved in "questionable foreign currency transactions", (3) the Pennsylvania FBI office had an investigative file revealing a Schiavone Company employee had given $3,000 in lumber in 1978 to a state highway official resulting in the official's dismissal, (4) an informant stated on February 6, 1981, that a former staffer in the Nixon White House recommended Mr. Donovan's appointment, and (5) a Seattle woman said on January 28, 1981 that Mr. Donovan defrauded her in an aluminum siding contract. App. 400–402.

[258] Moreover one of the allegations the FBI disclosed—that the Schiavone Company was involved in "questionable foreign currency transactions" apparently involving a Fiat subsidiary—related to the Big J allegations that Fiat helped the Schiavone Company with its "serious financial problems". *Compare* note 182, *supra*, and accompanying text.

[259] Director Webster forwarded a report about "the FBI's internal handling of certain memoranda and information that were not previously furnished." Ex. 31, App. 427.

[260] *Id.*

ences to the Schiavone Company, the withheld Masselli tape reference to Donovan or the FBI's failure to tell the Committee anything about the Big J allegations; the FBI has since broadened the scope of its inquiry to include other matters but not these.[261]

9. In June, Mr. Mullen publicly admits that he "consciously" withheld the Masselli tape reference from the Committee; Senators Hatch and Kennedy put a hold on his nomination to become DEA Administrator

On June 6, 1982 the *Washington Post* ran an article, "FBI Withheld Facts It Had on Donovan", an interview of Mr. Mullen.[262] According to that article, Mullen said he "consciously" decided not to mention the Masselli wiretap to the Committee, had no regrets about withholding it, would do it again, and, when he discussed wiretaps in his statement to the Committee, had "carefully confined" his remarks to the New Jersey wiretaps.[263] According to the article, when Mullen said that he told the Committee that "we [the FBI] located no [wiretap] reference to Mr. Donovan or Schiavone Construction Co.", he was mentally limiting his remarks to wiretaps in New Jersey, although he did not say so.[264] According to the article, he did not produce the wiretap reference "because in my judgment that [taped] conversation [including the reference to Mr. Donovan] was *not pertinent* (emphasis supplied)".[265] At the time of the Mullen interview, the Adamski memo that described the reference as "pertinent" had not "surfaced". The Committee did not even have it yet. Mullen was asked, "But it [the tape reference] wasn't even pertinent to the investigation, even though you're investigating associations? That reference wasn't pertinent?"[266] Mullen said, "That's right."[267] Mullen repeated, "One time! One!"[268] He said, "Hell . . . hell you hold one trip against a guy."[269]

Mr. Mullen's interview prompted the Committee Chairman and its Ranking Minority Member on June 8 to write to Chairman Strom Thurmond of the Committee on Judiciary.[270] They asked him to hold Mr. Mullen's confirmation in abeyance until the Labor Committee investigated "remaining unanswered questions" about the FBI's role including the actions of Mr. Mullen, "a key figure", in the Donovan background investigation.[271]

---

[261] Following this correspondence, the FBI revealed other facets of its investigation of itself. The FBI's internal investigation as reported to the Committee considered: (1) the FBI's handling of a New York office informant contact on January 11, 1981 furnished to the Committee only on June 7, 1982, (2) information furnished to the Chicago Division of the FBI headquarters on February 24, 1981, furnished to the Committee only on June 7, 1982, (3) four items of information that had not been forwarded to the FBI headquarters, (4) the manner of handling information obtained during an interview of James J. Donelan on January 23, 1981, (5) the misstatement to the transition team that Mr. Donovan was alleged to be a "heavy drinker and alcoholic," rather than a heavy gambler and an alcoholic, and (6) factual discrepancies between the teletype to FBI Headquarers containing the Big J information and a subsequently written internal memorandum discussing the same information. The most astonishing thing about this last facet of the FBI's internal investigation is that the FBI investigated "discrepancies" but not the more significant question, the FBI's failure to report the allegations to the Committee. Assistant Attorney General McConnell's letter to Senators Hatch and Kennedy, dated March 23, 1983.

[262] Ex. 22, App. 294.

[263] *Id.* at 295.

[264] *Id.*

[265] *Id.*

[266] *Id.*

[267] *Id.*

[268] *Id.*

[269] *Id.*

[270] Senators Hatch and Kennedy letter to Chairman Thurmond, dated June 8, 1982.

[271] *Id.*

10. Director Webster charges that the transition team was "not interested" in pursuing the organized crime allegations

On June 9, Director Webster called a press conference. It lasted ninety minutes. Director Webster reportedly said that Fred Fielding discouraged further investigation by the FBI on January 11, 1981. Director Webster reportedly said, "The question was asked [of Fielding], whether there was any interest in pursuing that [the Organized Crime allegations]." The Director said, "My understanding is that they [the transition team] were not interested in pursuing that particular matter." Mr. Webster said that the FBI expressly asked Mr. Fielding, "Do you want us to do any more?" and, according to Mr. Webster, "he [Mr. Fielding] didn't think it was necessary." [272]

Mr. Fielding immediately responded to Director Webster's remarks in a written statement he released; Mr. Fielding made no "personal response", according to the statement, because he had a "strep throat." [273] In his "approved" statement, Mr. Fielding said, "There was no mention that the [Organized Crime] allegation was based on a wiretap" and, he added, "the FBI has subsequently confirmed that [he] was never so advised." [274] Adamski "tend[ed] to doubt" that the FBI "confirmed" any such thing. Adamski, the only one to speak to Fielding,[275] said he told Fielding "that Donovan's name was overheard" and that "it was on tape". [276]

Fielding said that he was told of "a general allegation" that Donovan was "being invited to" or "attend[ing] a social event or events with reputed 'crime figures' " Fielding said nothing of Mr. Donovan's alleged business ties to organized crime.[277] Adamski said that he told Fielding of the alleged business ties as well.[278]

Fielding said Adamski "did not express serious concern". Adamski said he didn't know what Fielding meant but that he "*was concerned* because this is not the type of information that normally develops in the background of a Cabinet appointee" and he expressed "some concern" to Fielding.[279] Mr. Adamski said that by "concern" he meant "additional investigation *had to be conducted* (emphasis supplied)". [280]

Mr. Fielding told Adamski, however, "that little purpose would be served by interviewing Mr. Donovan about this [Organized Crime] allegation". Mr. Fielding held that view, he said, in "the absence of *confirming facts* or any suggestion of criminal wrongdoing". [281] But there were "confirming facts". On the next day, Mr. Adamski's memo to Mr. Fielding said that the allegation was "corroborated".

As for that memo from Adamski to him, Mr. Fielding claimed in his "approved" statement that it "was subsequently turned over to the Senate Committee". [282] Not so. The Committee did not see that

---

[272] R. Pear, "Donovan Inquiry Was Discouraged, Webster Says", N.Y. Times, June 10, 1982, at B8.

[273] Mr. Fielding's statement was prefaced as follows: "Please excuse the lack of a personal response. Mr. Fielding is suffering from a *strep throat* and barely able to talk. He *has approved* the following statement (emphasis supplied)." Ex. 42, App. 635–36.

[274] *Id.*

[275] App. 642.

[276] App. 630–31.

[277] Ex. 42, App. 635.

[278] App. 638.

[279] App. 645.

[280] *Id.*

[281] Ex. 42, App. 635.

[282] Ex. 19, App. 208; Ex. 42, App. 635.

memo until days after Mr. Fielding mentioned it on June 9, 1982, 18 months after Mr. Fielding first saw it.

The Committee has since invited Mr. Fielding to give sworn testimony in this investigation to clarify, among other things, the questions raised by Mr. Adamski's testimony; the Department of Justice declined the invitation.[283]

11. The Special Prosecutor issues his report disclosing that there are six tape references to Mr. Donovan, not just one as the FBI had said

On June 28, the Special Prosecutor released his report. The original filed with the court, consisted of four volumes and was 1025 pages long; the public edition was only one volume shorter. The Special Prosecutor considered a host of allegations against Mr. Donovan and briefly discussed the TUMCON (or Masselli) investigation.[284] The Special Prosecutor stated that his agents carefully reviewed all the "Masselli" tapes and thereby found *six* tape references to "Ray Donovan" by name.[285]

The Special Prosecutor found that the FBI overheard Masselli: (1) say that he attended a social function with Mr. Donovan,[286] (2) agree to forward a $1000 cash contribution to Mr. Donovan for a political fundraiser in Donovan's home,[287] (3) say that "he get[s] along good [sic] with all the [Schiavone Company] bosses", identifying Mr. Donovan as one of them,[288] and (4–6) mentioned Mr. Donovan by name in three other conversations.[289] The only reference to a social affair—the social function that Mr. Masselli attended—is the one that Mr. Adamski characterized as "pertinent" and that Mr. Mullen withheld from the Committee.[290]

After the Special Prosecutor issued his four volume report, he nevertheless continued to investigate, among other matters, the Big J allegations against Mr. Donovan.

D. The committee investigates the timeliness and completeness of the FBI's disclosures to the committee

On July 22, the Committee on Labor and Human Resources stated that it had "reason to believe" that the information that the FBI gave the Committee was "incomplete" and not "timely" provided and passed a resolution authorizing an investigation of these matters.[291]

---

[283] Deputy Attorney General Edward C. Schmults said, "As an institutional matter, the President cannot permit his Counsel to provide sworn testimony to the Legislative Branch regarding the performance of his duties." Deputy Attorney General Schmults' letter to Senators Hatch and Kennedy, dated April 19, 1983.

[284] The Special Prosecutor mistakenly explained that the acronym "TUMCON" meant "*To Uncover Masselli*" rather than "*TUM*inaro, the narcotics kingpin, after which the investigation was actually named. *Compare* note 397 (at App. 362) with note 50, *supra*.

[285] The Special Prosecutor said that the agents "confirmed the accuracy of their results with the assistance of the FBI's Soundex computerized indices Search System" [hereinafter referred to as "the System"]. Ex. 25, App. 362. The Committee does not know whether the System contained the six tape references by Mr. Masselli to Mr. Donovan; that certainly is the implication of the Special Prosecutor's Report. On April 18, 1983, Senators Hatch and Kennedy asked Director Webster if the System did have a record of all six references. The Committee is awaiting the Director's responses.

[286] For further discussion of the conversation of June 26, 1979, see notes 100–101, *supra*, and accompanying text.

[287] For further discussion of the conversation of June 4, 1979, see notes 94–99, *supra*, and accompanying text.

[288] For further discussion of the conversation of January 24, 1979, see notes 84–86, *supra*, and accompanying text.

[289] For further discussion of the conversations of January 27, March 15, and June 30, 1979, see notes 87, 90–93, 102–104, *supra*, and accompanying text.

[290] It is puzzling that the Special Prosecutor nevertheless stated that he did not find "*anything suggestive* of a relationship between Mr. Donovan and Masselli" in "any" of these six conversations. App. 362.

[291] Ex. 1, App. 5.

Although it was not stated in the Committee Resolution, by July 22, the Committee had reason to believe that the FBI had withheld from the Committee both (1) the HOFEX references to the Schiavone Company and (2) the Masselli tape references to Mr. Donovan. The Committee still did not know that (3) since January 1981 the FBI had withheld the Big J information and (4) that the FBI search of its indices in January 1981 had uncovered another investigation involving the Schiavone Company that the FBI had not disclosed to the Committee, namely, an investigation of sewer construction in Long Island. Chairman Hatch proposed without objection that the Committee take the sworn testimony of Messrs. Mullen, Adamski, and Fielding.

1. The Director said that the HOFEX references that he reported to Mr. Mullen and to the transition team, but withheld from the Committee, never existed

On August 11, 1982, Chairman Hatch administered the oath to Mr. Mullen and asked him what he knew about Director Webster's written statement to him that Schiavone Company "had appeared a number of times in our HOFEX [Hoffa Execution] investigation".[292] Mr. Mullen swore he was "sure that the Newark office had extensive investigation in the HOFEX investigation [293] and knew from the Director's memo that Schiavone was mentioned in the HOFEX reports [294] but he did not know how frequently the Schiavone Company was mentioned,[295] did not know therefore if it was mentioned "many times",[296] and did not know who told Director Webster that Schiavone was mentioned.[297] Mr. Mullen testified that he did not check it out or direct anyone to check it.[298]

Mr. Mullen said that before testifying he had discussed the Director's memo and the background investigation with Mr. Revell.[299]

The FBI gave the Director's HOFEX memo to the Special Prosecutor only after the 4-volume report issued in June.[300] Following Mr. Mullen's August 11th testimony, the Department forwarded, unbeknownst to the Committee, the transcript of Mr. Mullen's testimony to the Special Prosecutor.[301]

On August 13, two days after Mr. Mullen's appearance, the Special Prosecutor questioned the Director about the HOFEX reference in his memorandum. Director Webster told the Special Prosecutor that the HOFEX references he reported to Mr. Mullen and to the transition team, but withheld from the Committee, never existed.[302] Director Webster said that the Schiavone Company was not mentioned in the HOFEX reports, nor were the HOFEX reports even checked. Director Webster said that "certain subordinates" gave him this "erroneous information"—as he characterized it—but he was "uncertain" who they were.

---

[292] Ex. 3, App. 10.
[293] App. 63.
[294] App. 29.
[295] App. 59.
[296] App. 61.
[297] App. 59.
[298] App. 63.
[299] App. 67, 154.
[300] Spec. Pros. Supp. Rpt. 37–38.
[301] On August 19, Senator Hatch asked Assistant Attorney General Theodore Olson, who represented Messrs. Mullen and Adamski during their appearances before the Committee, if he had sent any of the sworn transcribed testimony to the Special Prosecutor. Mr. Olson said that he sent the transcripts of Mr. Mullen's testimony for August 11, 12, and 17, 1982. Senator Hatch asked that the Special Prosecutor formally request the transcripts from the Committee and the Committee would submit them. App. 634–637.
[302] Spec. Pros. Supp. Rpt. 40–41.

According to the Director's memorandum, he "checked with Mr. Revell" and cited his "recollection of [a] conversation [had] with Mr. Mullen"; Director Webster's memo did not mention anyone else by name.[303] Mr. Mullen, however, told the Special Prosecutor—as he told the Committee—that he did not order a review of the HOFEX file and was unaware "that anyone else did".[304] Mr. Revell told the Special Prosecutor that he "did not direct a review of the HOFEX file", that he "had no reason to do so" and that he "did not know the source" of that reference.[305] Charles Monroe, Revell's deputy in December 1980, said that he did not know "anything about a review of the HOFEX file in December 1980" [306] Mr. Adamski said that he is not familiar with the HOFEX case,[307] did not provide the information about the HOFEX case,[308] nor did he know of anyone working for him who did;[309] he said he had not even seen the Director's memo until 1982.[310]

2. Messrs. Adamski and Mullen give sworn testimony regarding the Masselli tape references to Mr. Donovan

a. Mr. Adamski testifies that checking the New Jersey wiretaps was "a procedural thing" done "in any applicant investigation"

Chairman Hatch asked Mr. Adamski under oath if he spoke to Mr. Mullen on January 12, 1981, about his memorandum disclosing the Masselli tape reference or the teletype that he attached to his memorandum. Mr. Adamski swore, "I did not." [311] Adamski denied that he had "any" discussions with Mr. Mullen "on the facts of the teletype".[312] Mr. Mullen, however, was "sure" that he "learned" about the Masselli tape reference from Mr. Adamski's memo and was "almost as certain" that he discussed it with him.[313]

Adamski testified that he did not know that Donovan was appearing before the Committee on January 12 (the day after he told Mr. Fielding about the organized crime allegations),[314] was surprised to find out [several days later] that a hearing had taken place [on January 12]" [315] and—despite press accounts of the Committee's intention to vote on Mr. Donovan's nomination on January 15—did not know that the Committee was scheduled to vote on January 15.[316]

Chairman Hatch asserted that "if that session [January 15th] had gone forward as scheduled . . . Mr. Donovan's nomination would have been voted out without the Committee having knowledge of the organized crime allegations" and asked Mr. Adamski if the FBI "intended to give any" of the Masselli information to the Committee before it voted. Adamski said that not only did he not know about the vote that day but that it was "not the practice of the FBI to deal *directly* with the Committee at that point in time".[317] Mr. Adamski was wrong. The

[303] Ex. 3, App. 10.
[304] Spec. Pros. Supp. Rpt. 43.
[305] *Id.* at 42.
[306] *Id.*
[307] App. 556.
[308] *Id.*
[309] App. 557.
[310] App. 549.
[311] App. 699.
[312] App. 660.
[313] App. 298–99.
[314] App. 451, 623, 674.
[315] App. 619.
[316] App. 682.
[317] App. 683.

FBI had dealt "directly" with the Committee by that time. The FBI had forwarded a memorandum dated January 7 about the Kantor case and another dated January 14 about the Picardo allegations.[318] Adamski nevertheless said that "The White House was the transmitter of the information developed during our investigations to [sic] the Committee."[319]

Chairman Hatch asked Mr. Adamski,

> Isn't it fair to say that if Mr. Picardo had not surfaced on January 13, 1981 . . . which of course, caused us to postpone the Executive Session scheduled for the 15th—that the FBI would never have given us this information directly.[320]

Assistant Attorney General Olson, representing Mr. Adamski during his appearance, objected saying,

> I think it is a question that calls for speculation and it is based on an assertion which we are not—

Senator Hatch interrupted,

> I'm asking him if he knows. If he doesn't know, then he can say so.

Adamski said,

> Our *normal* dissemination would have been to the White House, with every expectation that the Committee would have been promptly and timely advised.[321]

Despite Mr. Adamski's professed expectations, the Committee had not been advised.

Chairman Hatch asked if the organized crime allegations weren't "more recent than" the Picardo allegations and weren't they "corroborated".[322] Mr. Adamski said they were both "more recent" and corroborated by independent sources.[323] Mr. Adamski said that the organized crime allegations had not been provided, however, because "the investigation had not been completed".[324] Mr. Adamski shortly afterwards admitted that the FBI gave the Picardo allegations directly to the Committee although that investigation was hardly begun—only a day old—and certainly was not "completed".[325]

The Chairman asked how, given that the FBI did not mention the Masselli wiretap showing something, the FBI decided to mention the New Jersey wiretaps showing nothing.

The Chairman asked,

> When was the decision made to inquire whether there was any reference to Donovan or Schiavone on any wiretap in New Jersey.

Adamski swore,

> I don't think there was a *specific decision*. That information would be forthcoming from a check of our indices, ELSUR indices, or the indices—or ELSUR indices in the Newark office.[326]

Mr. Adamski first implied there was no decision then stated flatly, that it was "procedural".

The Chairman asked,

> Do you know who would have made that decision?

---

[318] For further discussion of the FBI memoranda of January 7 and 14, 1981, see notes 158–161, 191–196, *supra*, and accompanying text.
[319] App. 684.
[320] *Id.*
[321] *Id.* at 685.
[322] App. 687–89.
[323] *Id.*
[324] App. 694.
[325] *Id.*
[326] App. 727.

Mr. Adamski testified,

It *would have been a procedural thing*, Senator. The checks *just normally have been made.*

The Chairman asked,

In *any* applicant investigation.

Adamski answered,

In *any* applicant investigation.

The Chairman asked,

Now you checked the New Jersey wiretap references after you actually discovered a wiretap reference on the Masselli tapes, is that correct?

Mr. Adamski testified,

I believe it is accurate to say we *rechecked* (emphasis supplied).[327]

The Department later advised the Committee that only after—two weeks after—the FBI learned of the Masselli tape reference did Mr. Mullen discuss the New Jersey wiretaps with Adamski and others. In Mullen's and Adamski's presence a subordinate specifically requested that New Jersey search its indices.[328] This was the first and only time that the FBI checked its New Jersey wiretaps; the FBI therefore did not "re-check" them as Mr. Adamski testified. The Department also said that "a review of FBI records fails to disclose *any* instance in which OCIS, ISIS, or *ELSUR* were checked in an applicant investigation *before that of Secretary Donovan.*" [329]

b. Mr. Mullen testifies that he did not mention the New Jersey wiretaps to avoid discussing the Masselli wiretaps

The Chairman also questioned Mr. Mullen closely about the Masselli wiretap reference. Mr. Mullen conceded that he had met with three reporters and that there was a tape recorder on the table during the interview.[330] Mr. Mullen said, "If I had anything to do over in the whole affair, I would not have taken part in this interview." [331] He admitted however that the Washington Post accurately reported that he "consciously" decided not to mention the Masselli tape reference.[332]

He offered various reasons for his decision. He testified that he had not told the Committee about the Masselli tape reference because he wanted to protect the source and did not want to disclose "the nature of the TUMCON investigation".[333] The tape excerpt of Masselli talking to his son, however, neither revealed the source nor the nature of the investigation.[334] Moreover, it was required by law that the FBI notify those overheard that they had been taped so they knew the "nature" of the investigation by 1980.[335] The N.Y. Times ran a series of articles describing the "nature" of the TUMCON investigation

[327] App. 727–28.
[328] For a further discussion of the decision to mention the New Jersey wiretaps, see notes 205–208, *supra*, and accompanying text.
[329] Assistant Attorney General McConnell's letter to Chairman Hatch, dated September 17, 1982 at 2.
[330] App. 297, 310.
[331] App. 297.
[332] App. 302.
[333] App. 303.
[334] The Masselli tape reference to Mr. Donovan is further discussed at notes 100–101, *supra*, and accompanying text.
[335] For the discussion of the termination of the wiretap and notification of those overheard, see notes 105–111, *supra*, and accompanying text.

in 1980 so the public also knew.[336] Mr. Mullen said, however, that he did not know either when notice issued to those overheard or about the N.Y. Times' articles discussing the "nature" of the investigation.[337] He said, "I am not certain now [August 1982] that the public knows." [338] Even if the targets and the public did not know (and the evidence is that they did), Mr. Mullen could have requested an opportunity to advise the Committee of the tape reference in Executive Session but he did not.

Mr. Mullen then implied that he did not know enough. Having implied he knew what he was doing when he withheld the Masselli tape reference, Mr. Mullen said that "this was a special inquiry [background] investigation, and we [the FBI] didn't get heavily into other criminal investigation." [339] Mr. Mullen, however, certainly should have gotten information sufficient to form a decision to withhold the Masselli tape reference from the Committee. Mr. Mullen agreed that Mr. Donovan's associations were "pertinent" to the background investigation.[340] Mr. Adamski's memo to Mullen characterized the Masselli tape reference to Donovan as "pertinent".[341] Mr. Mullen, however, said Adamski was wrong to characterize the tape reference as "pertinent"; Mullen said that the word "pertinent" was "a little strong. I would not have used it." [342]

Senator Hatch asked Mr. Mullen if he said, as reported, that "he would withhold the information about the wiretap again, if he had to do it over again." Mullen testified, "That's a little strong, Senator." Senator Hatch said, "You don't think you were that strong?"

Mr. Mullen said,

> I do not. If I thought that having mentioned that one item would have prevented all of this, I surely would have mentioned it.[343]

Special Counsel subsequently called one reporter who interviewed Mr. Mullen. The reporter said that his "entire article" was accurate, that he had reviewed the tape of the interview "on a number of occasions since" and that Mr. Mullen had been asked "if he had it to do over again, would he tell the Committee about the Masselli wiretap?" "After some hesitation", that reporter said, "Mullen said 'No'" [344]

Chairman Hatch inquired why Mr. Mullen would mention the New Jersey wiretaps showing nothing when the Masselli wiretaps showed something.

Senator Hatch asked Mr. Mullen,

> Isn't it a fact that you mentioned the New Jersey overhears at the outset of your testimony in order to avoid discussing the Masselli tapes themselves.

---

[336] For further discussion of the four part series on the Masselli investigation run by the N.Y. Times, see notes 112–116, *supra*, and accompanying text.
[337] App. 321–22.
[338] App. 322.
[339] App. 323.
[340] App. 304.
[341] For the discussion of Mr. Adamski's memorandum to Mullen, see notes 187–88, *supra*, and accompanying text.
[342] App. 302.
[343] App. 325.
[344] On March 30, 1983, Special Counsel John P. Flannery II called Washington Post reporter George Lardner and discussed briefly his reported interview of Mr. Mullen. On April 1, 1983, Mr. Flannery signed and swore to a four paragraph affidavit describing the aforesaid conversation and caused the affidavit to be filed by Deborah Dahl, Legal Assistant, so that it became a part of the record of this investigation in accordance with the Committee Resolution, dated July 22, 1982 [hereinafter referred to as "Flannery Aff."].

Mr. Mullen answered,

> No. That was not my *primary* purpose, Senator Hatch. With regard to the New Jersey wiretaps, this was not a question, really put to me by any Senator or staff member. This was information *volunteered* by the FBI. Our intention in providing that information was *to further assist the Committee*, this is something else *to help them make up their mind* (emphasis supplied).[346]

Mr. Mullen later testified,

> The Newark office was *specifically* asked to conduct this sort of a check [of ELSUR] because the nominee was from New Jersey. At the time of the hearing, I couldn't have given it the same—had not made a similar request of other offices. It would have required more time, more effort. I don't know if we had the time to do it.[346]

Special Counsel also asked the reporter about that part of his June 6th article that said that Mr. Mullen "carefully confined" his remarks to the New Jersey wiretaps. The reporter said that was "accurate too". During the taped interview, the reporter said that Mr. Mullen confirmed that he "consciously" mentioned the New Jersey wiretaps to avoid mentioning the Masselli wiretap.[347]

3. The Big J information is Disclosed in the Special Prosecutor's Report for the first time, after Messrs. Mullen and Adamski have testified

On September 13, 1982, after Messrs. Mullen and Adamski had testified in this investigation, the Special Prosecutor's Supplemental Report issued. The very first page of that report discussed the "Big J information" contained in the January 11 teletype that the Special Prosecutor had for months,[348] namely: (1) that Donovan was definitely associated with organized crime figures as a result of negotiating with the trade unions,[349] (2) that the Schiavone Company did business with Big J, a mob outfit,[350] (3) that the Schiavone Company had had serious financial problems that Fiat helped it solve[351] and (4) that Donovan may have established a dummy corporation to launder money.[352] That was the first the Committee heard of the Big J information.

On that same day, Special Counsel called Assistant Attorney General McConnell, requested the Big J information, and asked for an explanation why it had not been produced before.

On September 17, Mr. McConnell wrote to Senators Hatch and Kennedy that "the majority" of that information was "summarized and is primarily in the January 23, 1981 letterhead memorandum".[353]

---

[345] App. 287–88.
[346] App. 292–93.
[347] Flannery Aff.
[348] Spec. Pros. Supp. Rept. 1, note 1. The Special Prosecutor noted that he had had the teletype for months before his June report.
[349] For a further discussion of this allegation, see note 179, *supra*, and accompanying text. Despite Mr. Donovan's sworn testimony to this Committee that he was "deeply involved" in the labor negotiating processes, see notes 4–6, *supra*, and accompanying text, the Special Prosecutor reported that "Mr. Donovan's *lack of involvement* in SCC's [Schiavone Construction Company's] relations with labor unions *was confirmed by Secretary Donovan* in his January 18, 1982, interview with the Special Prosecutor" and "by Messrs. Schiavone and DiCarolis"; the report did not disclose whether Messrs. Donovan, Schiavone and DiCarolis testified the same way before the grand jury since the Special Prosecutor "deleted" the grand jury material. Spec. Pros. Supp. Rpt. 5, n. 6.
[350] For a further discussion of this allegation, see notes 180–181, *supra*, and accompanying text.
[351] For a further discussion of this allegation, see note 182, *supra*, and accompanying text.
[352] For a further discussion of this allegation, see note 183, *supra*, and accompanying text.
[353] Assistant Attorney General McConnell's letter to Senators Hatch and Kennedy, dated September 17, 1982.

On November 15, Senators Hatch and Kennedy wrote him that, "We do not find it [the Big J information] in the [FBI's January 23rd] memorandum or any other material produced to the Committee. Please indicate specifically where you believe there are references to that memorandum." [354]

On December 3, Mr. McConnell produced the January 11, 1981 teletype from the New York FBI office to FBI Headquarters that contained the Big J information.[355] Mr. McConnell did not state, however, where in the January 23 Report or anywhere else the Big J information could be found.

On January 21, 1983, the Chairman and Ranking Minority Member said, "you overlooked this request in your last response. Would you please advise us where specifically you claim [in the January 23rd memo] that [Big J] information may be found".[356]

On March 3, 1983, Mr. McConnell said, "we did not overlook your request". He said, "Rather, we thought it sufficient to provide you with a copy of that memorandum and the related teletype, and to offer to discuss this information during your personal review of other documents. We still believe this procedure is the most sensible." [357] Mr. McConnell failed again to say where the Big J information could be found.

On March 15, 1983, representatives of the FBI including Paul Nolan, Chief Supervisor of FBI's OPR, John Mintz, FBI General Counsel and Mr. Adamski met with Special Counsel, the Minority Investigator, and the Ranking Minority Member's Administrative Assistant and others to "explain", we presumed, where the Big J information could be found in the January 23rd Report.[358]

Mr. Adamski stated, "I do not recall where it is in the Letterhead Memorandum [the Report] today." Mr. Adamski claimed, however, that the January 23rd Report "talked generally" about the allegations. He said, for example, that he discussed the dummy corporation when discussing the Kantor investigation and the Picardo allegations. Special Counsel stated that those dummy corporations were allegedly established by Mr. Kantor or Mr. Picardo, not by Mr. Donovan. Special Counsel asked where the Report said anything about a dummy corporation allegedly established by Mr. Donovan. Mr. Adamski said that he "thought that [all the Big J] information was generally included" and specified the following portion of the Report:

> The New York Division developed information between January 8 through January 10, 1981, through sources, that SCC, in which Mr. Donovan is an Executive Vice President, is "mobbed up". One source indicated the upper management of SCC is closely aligned with organized crime elements through its contacts with Jopel Construction headed by William Masselli, who is an alleged self-admitted "soldier" in an organized crime group. This source alleges Mr. Donovan is acquainted with organized crime figures through Masselli on a business and social basis.
>
> None of the New York sources was able to provide any information to show any specific criminal misconduct on the part of Mr. Donovan.[359]

---

[354] Senators Hatch and Kennedy letter to Assistant Attorney General McConnell, dated November 15, 1982.
[355] Assistant Attorney General McConnell's letter to Senators Hatch and Kennedy, dated December 3, 1982.
[356] Senators Hatch and Kennedy letter to Assistant Attorney General, dated January 21, 1982.
[357] Assistant Attorney General McConnell's letter to Senators Hatch and Kennedy, dated March 3, 1983.
[358] Adamski meeting, note 178, *supra*.
[359] Ex. 20, App. 222–23.

The portion makes no mention of (1) Mr. Donovan's "definite" organized crime ties as a result of his negotiations with trade unions, (2) Mr. Donovan's connections with Big J, (3) Fiat's financial assistance to the Schiavone Company, or (4) Mr. Donovan's dummy corporation.

On March 17, 1983 Mr. Nolan confirmed in a telephone conversation that Mr. Adamski had stated that the Big J information was contained in the passage in the January 23rd Report cited above.[360]

4. The FBI's search of its indices in January 1981 had uncovered another investigation of the Schiavone Company but the FBI did not disclose it

On December 3, 1982, Mr. McConnell informed the Chairman and Ranking Minority Member that, "During the background investigation of Raymond J. Donovan, the FBI checked its general indices and identified *a small number* of investigations with some relationship to Mr. Donovan or Schiavone Construction Company (emphasis supplied)." [361]

On January 21, 1983, the Chairman and Ranking Minority Member asked what were the "small number of investigations".[362]

On March 3, 1983, Mr. McConnell identified the TUMCON (or Masselli) investigation, the Gross investigation and, for the first time, told the Committee of "an investigation of sewer construction in Long Island, New York". [363]

III. CONCLUSIONS

Mr. Mullen testified in 1980 that if the U.S. Senate wanted information about a presidential nominee, all it had to do was ask.[364] The Chairman and Ranking Minority Member of the Committee did ask repeatedly for whatever information the FBI had about Mr. Donovan or the Schiavone Company.[365]

The Committee made its first request [366] directly to FBI Director Webster who, unbeknownst to the Committee, had run an investigation of Mr. Donovan and reported to the transition team that Mr. Donovan's firm "appeared a number of times in our [FBI's] HOFEX [Hoffa Execution] case".[367] Director Webster told the transition team and not the Committee. Director Webster now says he misinformed the transition team and has no idea where he got that information.[368] The background investigation of a cabinet nominee demands greater care than this.

The FBI's initial description of the Gross investigation on January 5 impliedly discredited the investigation although Mr. Gross was ultimately indicted for extortion.[369]

---

[360] Notes of Special Counsel Flannery of telephone conversation had with Mr. Nolan, dated March 17, 1983.
[361] Assistant Attorney General McConnell's letter to Senators Hatch and Kennedy, dated December 3, 1982.
[362] Senators Hatch and Kennedy letter to Assistant Attorney General McConnell, dated January 21, 1983.
[363] Assistant Attorney General McConnell's letter to Senators Hatch and Kennedy, dated March 3, 1983.
[364] See notes 118–123, *supra*, and accompanying text.
[365] See notes 151–53, 158–61, 197–200, 209–40, 244–46, 253–56, 292–347, 353–63, *supra*, and accompanying text.
[366] See notes 151–53, *supra*, and accompanying text.
[367] See notes 130–40, *supra*, and accompanying text.
[368] See notes 292–310, *supra*, and accompanying text.
[369] See notes 292–310, *supra*, and accompanying text.

The FBI's description of the Kantor investigation misstated and overlooked material facts; it also arrived too late. Thus, the Committee had to adjourn Mr. Donovan's appearance before the Committee.[370]

The FBI "developed" both the Masselli and Big J allegations before Mr. Donovan did first appear but did not disclose them to the Committee.[371] Both Messrs. Adamski and Mullen knew of the Masselli allegations as Mr. Donovan appeared before the Committee, characterized the Masselli allegations as "pertinent" and "important" but said nothing to the Committee.[372] Mr. Adamski told Mr. Fielding that the organized crime allegations were "corroborated" but did not tell the Committee.[373] Nor did Mr. Fielding.[374]

The Committee planned to vote Mr. Donovan's nomination on January 15.[375] The FBI did not even hint that there was more information. The day before the vote, the FBI wrote the Committee that they had "additional information" and told the Committee of Picardo's allegations about events ten years earlier that the FBI had neither corroborated nor investigated.[376] If the FBI disclosed the unproven Picardo allegations immediately and directly to the Committee, there is no excuse for the FBI's failure to tell the Committee simultaneously about the Masselli allegations, part of an ongoing investigation involving "pertinent" and "important" information, some of which the FBI had "corroborated". If the Picardo allegations had not alarmed the Committee, the Committee would have voted without *any* knowledge of the Masselli allegations. But the Picardo allegations did alarm the members.[377]

When the Chairman scheduled an appearance for the FBI and Mr. Donovan again, the FBI prepared a Report and Statement to the Committee that gave some but withheld other information.[378] The FBI did not mention an investigation of sewer construction that involved the Schiavone Company.[379] The FBI withheld all the Big J allegations.[380] The FBI withheld some of the Masselli information including the Masselli tape reference to Donovan that Mr. Adamski characterized as "pertinent" and Adamski's conclusion that the organized crime allegations were "corroborated".[381] The FBI description of the Masselli investigation was confusing at best.[382]

Nor was this all an accident. Mr. Mullen "consciously" withheld the Masselli tape reference from the Committee.[383] Once Mullen decided not to mention a wiretap that showed something, both Mr. Mullen and Mr. Adamski decided to tell us about 10 years of wiretaps in New Jersey that showed absolutely nothing; Messrs. Mullen and Adamski misled the Committee.[384] During this investigation, Adamski tried again to mislead this Committee when he said that checking

---

[370] See notes 25–35, 158–61, 358–60, *supra*, and accompanying text.
[371] See notes 50–116, 162–83, *supra*, and accompanying text.
[372] See notes 173–74, 188, *supra*, and accompanying text.
[373] See note 189, *supra*, and accompanying text.
[374] See notes 175–77, 189, 272–93, *supra*, and accompanying text.
[375] See notes 185–86, *supra*, and accompanying text.
[376] See notes 190–96, 322–25, *supra*, and accompanying text.
[377] See notes 197–200, 317–321, *supra*, and accompanying text.
[378] See note 211, *supra*, and accompanying text.
[379] See notes 361–63, *supra*, and accompanying text.
[380] See notes 178–86, 205–11, 348–60, *supra*, and accompanying text.
[381] See notes 100–101, 162–77, 187–88, 189, 195–96, 201–204, 205–210, *supra*, and accompanying text.
[382] See notes 212–13, 221–24, *supra*, and accompanying text.
[383] See notes 206, 330–34, *supra*, and accompanying text.
[384] See notes 207–208, 210, 214–21, *supra*, and accompanying text.

the New Jersey wiretaps was "a procedural thing" that was "normally" done "in any applicant investigation".[385] Nor was Mr. Mullen candid when he denied that the "primary purpose" of mentioning the New Jersey wiretaps was to avoid disclosing the New York Masselli wiretaps.[386]

In short, the FBI supplied information that was inaccurate, unclear, and too late. Worse, while the FBI told the Committee that there was nothing else to know, it withheld "pertinent", "significant", and "important" information.

The FBI presumed too much when it decided what information the Committee could or could not have. The HOFEX, Masselli and Big J information might not, collectively or individually, have made any difference to any member of the Senate. Determining the information's relevance, credibility and its weight, however, was the constitutional prerogative of the U.S. Senate—not of the FBI. The FBI's inaccuracies, lack of clarity, and untimely production compromised the Senate's ability to inform itself. The FBI usurped the Senate's constitutional responsibility; it guaranteed that no Senator's consent would be adequately informed.

IV. RECOMMENDATIONS

1. It is recommended that the FBI abide by its own Manual of Investigative Operations and Guidelines, that upon discovering derogatory information in the background investigation of a Presidential nominee that the FBI investigate the matter sufficiently to prove or disprove it.

2. The President nominates but the U.S. Senate confirms. Both parties share this constitutional responsibility equally and should be treated equally in fulfilling their separate functions. The Senate, as the confirming body, must have the same information in granting (or withholding) its consent to confirm as the President had when he decided to nominate. It is therefore recommended that Congress require by statute that the FBI furnish in a timely fashion to the Senate through the appropriate confirming Committee (or Committees) the information—all the information—that the FBI developed in its background investigation of the nominee including any information that it furnished, whether verbal or written, to the President (or President-elect).

3. If the nominee, his firm, business or social relations have been involved in a past investigation or are involved in an ongoing investigation, the FBI must so advise the Senate. If the information is worthy of being kept secret, then the Senate will keep it secret. But the Senate must have the information in the first instance. It is recommended that the Senate establish—with the concurrence, if possible, of the nominating branch of government—guidelines that say what is worthy of confidentiality and procedures (for example, executive sessions) that prevent unauthorized disclosures but permit the Senate through its confirming committees to inform itself.

[385] See notes 326–29, *supra*, and accompanying text.
[386] See notes 345–47, *supra*, and accompanying text.

O